BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF ALABAMA

FOR THE PERIOD

FROM OCTOBER 1, 1926
TO SEPTEMBER 30, 1928

CHARLIE C. McCALL ..... *Attorney General*
JUDGE A. A. EVANS ..... *First Assistant Attorney General*
JOHN J. HAYNES ..... *Assistant Attorney General*
W. M. RAYBURN ..... *Assistant Attorney General*
THOS. E. KNIGHT, JR. ..... *Assistant Attorney General*
MERWIN T. KOONCE ..... *Assistant Attorney General*

JUDGE J. Q. SMITH ..... *Special Assistant Attorney General*
(To Alabama Public Service Commission)
J. W. BRASSELL ..... *Special Assistant Attorney General*
WILLARD McCALL ..... *Special Assistant Attorney General*
(On Collection Delinquent Taxes, Etc.)

MRS. ALICE KENT BALDWIN ..... *Chief Clerk and Stenographer*
MISS NELL M. JOHNSON ..... *Stenographer*
MRS. J. W. KIGHT ..... *Stenographer*
MISS MILDRED LYONS ..... *Clerk State Board of Pardons*

MRS. LORRAINE T. MOORE ..... *Chief of Criminal Investigations*

To the efficient work of Honorable Merwin T. Koonce, Assistant Attorney General, and the stenographic force of the office, is due the credit for the preparation of this report, and I desire herein to commend them for their tireless efforts.

CHARLIE C. McCALL,
Attorney General.

ATTORNEYS GENERAL OF ALABAMA

1819-1928

Henry Hitchcock	1819
Thomas White	1823
Constantine Perkins	1825
Peter Martin	1832
Alexander B. Meek	1836
John D. Phelan	1836
Lincoln Clarke	1838
Matthew Lindsay	1839
Thomas D. Clarke	1843
William H. Martin	1847
Marion A. Baldwin	1850
John W. A. Sanford	1865
Joshua Morse	1868
John W. A. Sanford	1870
Benjamin Gardner	1872
John W. A. Sanford	1874
Henry C. Tompkins	1878
Thomas N. McClellan	1884
William L. Martin	1889
William C. Fitts	1894
Charles G. Brown	1898
Massey Wilson	1903
Alexander M. Garber	1907
Robert C. Brickell	1911
William L. Martin, Jr.	1915
F. Loyd Tate	1918
Emmet S. Thigpen	1918
J. Q. Smith	1919
Harwell G. Davis	1921
Charlie C. McCall	1927

Note: For many years, and until Feb. 20, 1866, the law required the Attorney General to act as solicitor for the circuit in which the seat of government was located.

LIST OF CIRCUIT JUDGES AND SOLICITORS

1st Circuit—Choctaw, Washington and Clarke counties. Judge T. J. Bedsole, Chatom; Solicitor Joe M. Pelham, Jr., Chatom.

2nd Circuit—Butler, Crenshaw and Lowndes counties. Judge A. E. Gamble, Greenville; Solicitor Calvin Poole, Greenville.

3rd Circuit—Barbour, Bullock, Dale and Russell counties. Judge J. S. Williams, Clayton; Solicitor T. M. Patterson, Clayton.

4th Circuit—Bibb, Dallas, Hale, Perry and Wilcox counties. Judge Thos. E. Knight, Greensboro; Solicitor Jos. H. James, Greensboro.

5th Circuit—Chambers, Macon, Randolph, Tallapoosa and Lee counties. Judge S. L. Brewer, Opelika; Judge W. P. Bowling, LaFayette; Solicitor C. H. Vann, Roanoke.

6th Circuit—Tuscaloosa county. Judge Henry B. Foster, Tuscaloosa; Solicitor Ed deGraffenreid, Tuscaloosa.

7th Circuit—Calhoun, Cleburne and Talladega counties. Judge R. B. Carr, Anniston; Solicitor J. B. Sanford, Talladega.

8th Circuit—Cullman, Lawrence, Limestone and Morgan counties. Judge O. Kyle, Decatur; Judge Jas. E. Horton, Athens; Solicitor John R. Sample, Hartselle.

9th Circuit—Cherokee, DeKalb, Marshall and Jackson counties. Judge W. W. Haralson, Fort Payne; Solicitor H. G. Bailey, Boaz, Alabama.

10th Circuit—Jefferson county. Judge Richard V. Evans, Birmingham; Judge C. B. Smith, Birmingham; Judge H. P. Heflin, Birmingham; Judge Romaine Boyd, Birmingham; Judge Joe C. Hail, Birmingham; Judge Roger Synder, Birmingham; Judge J. C. B. Gwin, Bessemer; Judge John Denson, Birmingham; Judge John P. McCoy, Birmingham; Judge William Walker, Birmingham; Judge J. Russell McElroy, Birmingham; Solicitor Jas. G. Davis, Birmingham; Assistant Solicitor Ben G. Perry, Bessemer.

11th Circuit—Colbert, Franklin and Lauderdale counties. Judge Chas. P. Almon, Florence; Solicitor Henry D. Jones, Russellville.

12th Circuit—Coffee and Pike counties. Judge W. L. Parks, Troy; Solicitor J. M. Loflin, Enterprise.

13th Circuit—Mobile county. Judge Safford Berney, Mobile; Judge Joel W. Goldsby, Mobile; Judge Claude A. Grayson, Mobile; Solicitor Bart B. Chamberlain, Mobile.

14th Circuit—Walker, Winston, Fayette, Lamar and Marion counties. Judge R. L. Blanton, Jasper; Judge Ernest Lacy, Jasper; Solicitor B. G. Wilson, Jasper.

15th Circuit—Montgomery county. Judge Leon McCord, Montgomery; Judge Walter B. Jones, Montgomery; Solicitor W. T. Seibels, Montgomery.

16th Circuit—Blount, Etowah and St. Clair counties. Judge O. A. Steele, Oneonta; Judge Woodson J. Martin, Gadsden; Solicitor W. G. Rains, Gadsden.

17th Circuit—Marengo, Greene, Pickens and Sumter counties. Judge Ben Elmore, Eutaw; Solicitor W. R. Kimbrough, Linden.

18th Circuit—Clay, Shelby and Coosa counties. Judge E. S. Lyman, Montevallo; Solicitor A. L. Hardagree, Ashland.

19th Circuit—Autauga, Chilton and Elmore counties. Judge Geo. F. Smoot, Wetumpka; Solicitor Winston Huddleston, Wetumpka.

20th Circuit—Geneva, Henry and Houston counties. Judge H. A. Pearce, Dothan; Solicitor J. N. Mullins, Dothan.

21st Circuit—Baldwin, Conecuh, Escambia and Monroe counties. Judge John D. Leigh, Brewton; Solicitor Leonard S. Biggs, Monroeville.

22nd Circuit—Covington county. Judge Emmet Thigpen, Andalusia; Solicitor Robert S. Reid, Andalusia.

23rd Circuit—Madison county. Judge Paul Speake, Huntsville; Solicitor Jas. H. Pride, Huntsville.

Letter Transmitting Report of The Attorney General to His Excellency, Bibb Graves, Governor of Alabama.

To His Excellency,
Bibb Graves,
Governor of Alabama.

I have the honor to submit for your consideration the Biennial Report of the Attorney General of Alabama covering the period beginning with October 1, 1926, and ending with September 30, 1928, pursuant to Subsection 5 of Section 853, Code of Alabama, 1923, with certain suggestions which I believe, if followed, will tend to the suppression of crime and the improvement of the administration of justice.

CRIMINAL STATISTICS

The criminal statistics furnished in the reports of the various solicitors throughout the State are being prepared in the manner prescribed by law, and will appear in the report as finally compiled.

RECORD IN COURT OF APPEALS AND SUPREME COURT OF STATE

Under the law the Attorney General is the Chief Law Officer of the State, and represents the State in all criminal proceedings before the Court of Appeals and the Supreme Court, and also represents the State wherever it is a party in interest in any civil proceeding.

During the Biennial Period just closed, the Attorney General's Office handled eleven hundred and forty (1140) criminal appeals before the Court of Appeals and the Supreme Court of Alabama. Of this number seven hundred (700) were affirmed, two hundred and fifteen (215) were dismissed and two hundred and twenty-five (225) were reversed.

These figures show the largest number of criminal cases handled by the Attorney General's Office before these Appellate Courts in the history of the State. There were forty-six (46) more affirmances and dismissals secured during this biennial period (1926-28) than there were secured during the last biennial period of my immediate predecessor (1924-26).

During the period of time under consideration we handled nine hundred and seventy (970) criminal cases before the Court of Appeals, of which number five hundred and fifty-five (555) were affirmed, two hundred and fifteen (215) were dismissed, and two hundred (200) were reversed. In the Supreme Court of Alabama we handled one hundred and seventy (170) criminal appeals, of which number one hundred and forty-five (145) were affirmed and twenty-five (25) were reversed.

I am happy to inform you that during this first biennial period of my administration as Attorney General the percentage of reversals in criminal appellate work was only nineteen and seven-tenths per cent (19.7%). Only once in the history of the State has there been a lower percentage, 1915-16, when there were only five hundred and fifty (550) appealed cases, or less than one-half as many as were handled by my office during the same period

of time, and even then the record was only sixteen and nine-tenths per cent (16.9%). In the administration of my immediate predecessor in the biennial period 1922-24, the percentage of his reversals was twenty-three and four-tenths per cent (23.4%), and in 1924-26, his percentage of reversals was twenty and five-tenths per cent (20.5%). Immediately following this letter of transmittal is set forth the statistical data on criminal appellate work since 1885.

The above figures do not include civil cases.

Your attention is invited to the fact that the percentage of reversals has constantly decreased during the last eight years. A large contribution to the record of the decrease of reversals was your Excellency permitting me an additional assistant, and the wisdom of the Legislature in recognizing the increase of volume of work. To the untiring efforts of my Assistant Attorneys General, W. M. Rayburn, Thomas E. Knight, Jr., and Special Assistant Attorney General J. W. Brassell, who have handled criminal appeals, is due the credit for this splendid record.

ADVISORY OPINIONS

In Alabama, the office of Attorney General was recreated by the Constitution under its well known Common Law designation, and by virtue of this fact it is clothed with all the powers and functions devolving upon it as it was known under the Common Law, except where some constitutional statute may provide otherwise, and in addition the Legislature by statute has devolved upon the Attorney General many other powers, functions and duties, as well as having enacted into written law many of the Common Law powers.

Under both the written and unwritten law the Attorney General is the legal adviser to all State officers and State departments, bureaus, boards and commissions. (Subsection 1, Section 853, Code of Alabama, 1923.) By an Act approved February 10, 1923 (Section 868, Code of Alabama, 1923), the additional duty was imposed upon the Attorney General to render legal opinions to all county officers, on questions of law connected with their duties, and the written opinion of the Attorney General, secured by either a State or county officer legally entitled to secure such an opinion, protects such officer to whom directed from liability to either the State, County or other municipal subdivision of the State, because of any official act performed as directed or advised in such an opinion. (Debates, Constitutional Convention, 1901; Section 869, Code of Alabama, 1923.)

During this biennial period reported upon, in fulfillment of the duty to render legal advice to officials throughout the State, this office has rendered approximately one thousand three hundred and seventeen (1,317) official opinions. In addition it has rendered several hundred unofficial opinions to parties throughout the State.

When one considers the fact that the rendition of an official opinion construing the law involves considerable study in each instance, and great care in the preparation thereof, one may readily realize the tremendous task accomplished by the small force provided, and it is interesting to note that out of the vast number of opinions thus rendered during this period less than a dozen of them have been overruled by the courts of the state. In many in-

stances many of them have been tested in the courts, and the overwhelming percentage have been upheld. In subsequent pages of this report I have set forth only a small fraction of the number of official opinions rendered, and only such opinions as, in my judgment, after conference with all of my Assistants, I deemed of particular value to State, County, and other public officials, and I sincerely trust that this presentation of these opinions in printed form, with the index provided therefor, may be of some value to the public officials throughout the State.

In the presentation of this increased number of official opinions in this biennial report, I am departing somewhat from the custom of certain of my predecessors, in view of the general request made by State and County officials, that such report of opinions be as complete as practicable.

THE ATTORNEY GENERAL—POWERS, FUNCTIONS AND DUTIES OF

There are many who do not realize the manifold powers, functions and duties which devolve upon the Attorney General of this State, and in order that there may be a clear understanding thereof, and as a preface or basis for the remarks hereinafter set forth, I shall briefly enumerate them, at least partially.

As heretofore stated, the office of the Attorney General was recreated in our Constitution under its well known Common Law designation, and is vested with certain well defined powers, functions, and duties devolving upon it at Common Law, as well as with many other additional matters under the statutory law.

The office of the Attorney General is the only Common Law office in the executive branch of State government. The Attorney General is the Chief Law Officer of the State, while the Governor is the Chief Law Enforcement Officer of the State and its Supreme Executive. The Attorney General is the prosecuting officer of the State and represents the State before the Appellate Courts in criminal appeals, as well as those civil proceedings where the State is a party in interest. Under our law the Attorney General may direct the various local solicitors throughout the State to handle criminal proceedings. He may order a solicitor from one circuit to another under certain conditions. The Attorney General may personally, or through his duly authorized deputies, conduct grand jury investigations and prosecutions in the Inferior Courts, just as a local prosecuting attorney. In addition he is authorized to conduct investigations of violations of the criminal law throughout the State. He prosecutes civil cases in which the State's revenue is involved. As heretofore stated, he renders official opinions to all State and County officials on matters connected with the discharge of their duties. He is required to render official opinions to the chairman of the Judiciary Committee of either House of the Legislature upon matters under consideration of the committee. He prepares all contracts and writings in relation to matters in which the State is interested whenever required so to do by the Governor. He is required to attend all cases other than criminal that may be pending in the Courts of Montgomery County, in which the State may be in any manner concerned. On the written order of the Governor he must appear in the courts of other states or of the United States, in any cause

in which the State may be interested in the result, but of his own motion he may institute and prosecute in the name of the State, all suits and other proceedings at law or in equity, necessary to protect the rights and interests of the State. He superintends the collection of all notes for school lands which may be turned over to him by the Superintendent of Education. He advises and instructs the solicitors of the several circuits on matters appertaining to the proper discharge of their duties. His written opinion to State and County officers is protective to them on matters on which the advice is officially sought and given. No officer or department is bound to follow the opinion of the Attorney General other than Examiners of Accounts in the examination of records of public officials. All litigation concerning the interest of the State or any department thereof is under the direction and control of the Attorney General.

By the Constitution he is required to participate in the framing of the Board of Pardons. He has been elected by the other members thereof as Chairman of said Board,, and in this capacity he handles all the records and correspondence of the Board of Pardons with his regular clerical force.

The Attorney General is by statute a member of several boards and commissions, among which are:

The State Pension Board.
Commission on Public Buildings and Grounds.
The Highway Bonding Commission.
The State Memorial Commission.
The Budget Commission.
The State Board of Compromise.

By the Constitution he is required to participate in the framing of the quadrennial revenue bill.

The Attorney General is elected by the people and responsible to them for the proper discharge of his duties. He appoints of his own volition his regular office force but the employment of any extra assistance, and the expenditure of all funds for the investigation, prosecution or suppression of crime, and the general administration of the affairs of the office must be with the approval of the Governor.

BOARD OF PARDONS

By Section 124, Constitution of Alabama, 1901, the Board of Pardons is created, consisting of the Attorney General, Secretary of State, and State Auditor. This Board has jurisdiction to consider all recommendations or petitions for pardon, commutation, or parole, of persons convicted of felonies. It is purely advisory in nature in all such cases except as to the restoration of civil and political rights. In other words, the Chief Executive may go contrary to the recommendation of the Pardon Board in his action upon the application for parole or commutation, but the Chief Executive cannot relieve one from civil and political disabilities unless he has the approval of the Board of Pardons.

Very little legislation has been enacted relating to the functioning of the Pardon Board. Chapter 48, Code of Alabama, 1923, restates the duties of said board, clothes it with authority to call upon certain public officials for information, requires that it file an annual report with the Governor, and

provides that the members of said Board for the performance of their duties as such, shall receive no additional compensation, and that the clerical force of such officers shall perform clerical duties for the Board. Chapter 202, Code of Alabama, 1923, deals with the powers of the Governor in pardon matters, requirements for publication of notice of application and the keeping of said records in the Governor's office. By Article 2, of Chapter 219, Code of Alabama, 1923, the Board of Pardons is required to pass upon the release of all persons serving indeterminate sentences and the Board and the members of said board are given certain powers in connection with such cases. Also by this article the board is given the power to establish rules in the matter of paroles and the granting and revocation thereof in indeterminate cases.

As chairman of said Board of Pardons the clerical force of this office has handled all of the files in all cases coming before said board. It has prepared all the records and carried on all of the correspondence of said board in relation to cases before it.

The Board of Pardons has considered the following number of cases during the biennial period:

1926-27	970
1927-28	715
TOTAL, 1926-28	1,685

In addition the Pardon Board has passed upon the following indeterminate sentence cases during this period:

1926-27	606
1927-28	958
TOTAL, 1926-28	1,564

It will be noted, therefore, that in addition to carrying on the correspondence for the Board of Pardons, preserving the files, and preparing the records of its actions the Attorney General during the biennial period of this report has passed upon three thousand two hundred and forty-nine (3,249) pardon, parole or commutation matters, coming before said board, and this within itself is a tremendous task.

I feel that in view of my experience with these matters, and in the capacity of Attorney General of the State, I should make some comment upon the procedure of the Pardon Board, and certain suggestions looking to a remedy for the present situation, as follows:

First: As it now stands the Board of Pardons is nothing more nor less than a buffer or excuse. Its recommendations have no legal weight or binding force. In my judgment the Governor should not be permitted to grant a pardon, parole or commutation of sentence in felony cases without the approval of the Board of Pardons, and I recommend the law be so amended.

Second: Under present procedure, in my judgment the Board of Pardons has not sufficient basis upon which intelligently to act on applications submitted to it. The whole thing is a farce. Take for example the common type of case coming before said board: A man is convicted of a felony and sentenced to a term of servitude in the penitentiary. Several years after be-

ginning his sentence he files an application for parole and with it a copy of the newspaper notice and probably a petition bearing the names of a number of citizens of the locality in which he committed the crime. The board then writes to the solicitor and judge who presided at the trial, for recommendations. If the sentence being served is five years or more the judge who presided is supposed already to have furnish the Executive Officer with a synopsis of the case. Telegrams and letters from interested parties then deluge the Pardon Board and the Governor. Delegations come to inspect the files. More memoranda and more excusing letters are then filed. The Convict Department furnishes a record of prisoner's service showing him classified according to his conduct during servitude. The Pardon Board knows little or nothing about the facts in the case and has no way of obtaining same. The result is that it acts largely on the basis of hearsay and conduct classification accorded to prisoner by the Convict Department. It has no established form of procedure and none can be established for it under the present law except that the board establishes its own procedure. Usually the members differ on this and the result is a hap-hazard sort of method with each member handling the work according to the dictates of his own conscience and according to his own individual methods.

To my way of thinking the conduct of the hearings on matters of clemency and the basis for granting clemency is about the biggest farce with which the State is afflicted.

I believe that the Legislature should enact laws:

(a) Setting forth definite rules of procedure for the Board of Pardons.

(b) Requiring judges and prosecuting attorneys to give a complete synopsis of felony cases immediately on conviction.

(c) Requiring advertisement of applications for parole.

(d) Providing methods of granting temporary paroles.

(e) Requiring semi-annual psychiatric reports on prisoners in the penitentiary.

(f) Authorizing the chairman of the board to administer oaths at hearings.

(g) Providing the method by which the Pardon Board can obtain the production of necessary records and evidence for its consideration.

(h) Outlining practically the method to be pursued by board members in officially acting upon applications.

(i) Prohibiting the practice of certain persons seeking clemency for prisoners for a fee.

(j) Providing for the election of a chairman, the custody of the records, and the centralizing of the correspondence on such matters under the direction of the chairman of the board, with a competent secretary provided by statute for such purpose.

The handling of indeterminate sentence cases by the Board of Pardons is confusing and without any record sufficiently complete to justify intelligent action. Laws should be enacted bringing this phase of its work out of its chaotic condition. The only thing the Pardon Board has as a basis on which to act in an indeterminate sentence case is a brief record hurriedly compiled by the Convict Department showing the name, age, and race of the

prisoner with date of conviction, beginning of sentence, expiration of minimum and maximum term, and a small amount of other historical data.

The law should require the Board of Administration to furnish the historical statement in such cases to the Pardon Board at least fifteen days before the time for the release of the prisoner under his minimum sentence and in all such cases the Pardon Board should have the recommendations of the judge and solicitor and the original synopsis of the cases prepared as heretofore outlined for other cases.

As it stands the matter of granting clemency to prisoners can be made a political football by State officials connected with clemency matters.

HIGHWAY BONDING COMMISSION

As a member of this commission the Attorney General has attended all meetings thereof and discharged all duties necessary in effecting sale of the following public road, highway and bridge bonds:

Date of Sale:	Series	Amount
June 16, 1927	F	$2,000,000.00
September 15, 1927	G	5,000,000.00
April 11, 1928	H	5,000,000.00

STATE DOCKS COMMISSION

The Attorney General has attended all meetings of the State Docks Commission held for the purpose of effecting the sale of bonds and has discharged the duties of Attorney General as provided by statute for the sale of the following harbor improvement bonds:

Date:	Series	Amount
April 23, 1927	Sixth	$1,000,000.00
September 15, 1927	Seventh	1,000,000.00
December 15, 1927	Eighth and Ninth	2,000,000.00
May 1, 1928	Tenth	1,000,000.00

The activities of the Highway Bonding Commission and the State Docks Commission has been sufficiently performed and none of its actions have been subjected to legal criticism. For this I must give credit to my First Assistant Attorney General, Judge A. A. Evans, whose long experience with such matters has fitted him pre-eminently to handle same with care and safety.

APPLICATION FOR PATENTS

During the biennial period this office has passed upon forty-seven applications for patents. Of this number there were three of a doubtful nature and for that reason they were heard by the Board of Compromise of School Lands as provided by Section 617, School Code, 1924. Assistant Attorney General Merwin T. Koonce, has specialized in this particular type of work and in addition thereto has examined a large number of lengthy abstracts concerning other property. His work was very efficient in this regard.

PENSION BOARD

The Attorney General is a member of the State Pension Board which considers all applications for pensions under the law of the State. By the statutory law the Chief Examiner of Accounts has certain specific duties with regard to this board and is the custodian of all the files and correspondence. This board has passed upon a large number of applications, but this will appear in the records of another department. The Attorney General receives no additional compensation for any extra duties imposed upon him in any regard.

STATE BOARD OF COMPROMISE

This board is a creature of statute and passes upon certain doubtful claims. As a member thereof the Attorney General has prepared all the records of said board and they are now a part of the files of his office. The board has disposed of thirty petitions during the biennial period. Assistant Attorney General John J. Haynes has represented the Attorney General on this board and his work in every respect has been highly efficient and carefully performed.

PUBLIC BUILDINGS AND GROUNDS

By statute the Attorney General is a member of this commission, which deals with contracts relating to the improvement of the State Capitol Building, and other public buildings and grounds. The director of the Department of Archives and History is the secretary of said commission, and all members serve without extra compensation therefor. The records of its activities are kept by the secretary. The Attorney General has performed all duties imposed upon him as a member.

During the fiscal year of 1927 the Governor called meetings of the commission to consider the expenditure of funds from the annual appropriation of $100,000.00 as follows:

1. On October 26, 1927, the commission in meeting assembled on call by the Governor authorized $500.00 for minor improvements on a state-owned building on the corner of Monroe and Bainbridge Streets to be occupied by the Adjutant General's office.

2. On December 15, 1927, the commission was called to confirm a contract with Mr. Roderick D. MacKenzie, additional to a former contract authorizing the expenditure of $1,328.00 in connection with the decoration of the dome of the Capitol. At that meeting the eight historical episodes to be painted by Mr. MacKenzie to be placed in the eight plaster frames on the walls of the dome were adopted.

3. On May 22, 1928, pursuant to a call from the Governor authority was given to the Governor by the commission to engage a landscape architect to map out a building program for the State Capitol and for the State educational institutions.

4. On June 20, 1928, pursuant to a call by Governor Graves the Capitol Building Commission and the Alabama Art Commission met in joint session to receive a report of tentative plans for the proposed landscape program authorized at the former meeting for the Capitol and State educational

buildings. Mr. James Frederic Dawson and Mr. Leon Henry Zack, representatives of Olmsted Brothers, of Boston, Mass., were heard and a contract given their firm for the proposed landscape work.

STATE MEMORIAL COMMISSION

The director of the Department of Archives and History is secretary of this commission, which is a creature of statute, and the commission is required to make an annual report of its activities.

No meeting was held during the past year by the commission as there is nothing it can do until means are provided for the erection of the structure. The campaign for public subscription for this purpose that was put on in 1919 produced in voluntary donations a total of $60,631.48. Of this amount $53,389.81 has been expended for the purchase of a lot facing the south end of the Capitol. There is a balance on hand of $7,241.67 as per the last report of Hon. George W. Ellis, Treasurer of the Alabama Memorial Commission.

STATE BUDGET COMMISSION

By statute, the Attorney General is a member of this commission, of which the Governor is chairman. The duties of said commission are fully outlined in Sections 906-919, Code of Alabama, 1923. Members of said commission are set forth in Section 906 as amended by the act approved January 28, 1927. The Attorney General draws no extra compensation as a member of said commission. The Attorney General has performed all duties required of him as a member of said commission in aiding in the preparation of the statistical data mentioned in the law. I desire to invite your attention especially to Section 917, Code of Alabama, 1923, wherein persons having claims against the State, for which action by the Legislature is desired, are required to file their statements with the commission. This is a very salutary law if people would follow it.

LEGAL ADVISER TO ALABAMA PUBLIC SERVICE COMMISSION

The Attorney General is the legal adviser to this commission and by statute he is given a Special Assistant Attorney General paid from the funds of said commission, with definite duties to be performed for it under his direction.

I was extremely fortunate in being able to obtain the services of Judge J. Q. Smith, former Attorney General of Alabama, to fill this position and he has filled it with great efficiency and in addition has rendered valuable assistance to me in carrying on other legal work of the Attorney General's Department. I have required of him that he furnish me a resume of certain important litigation in which he has participated as Special Assistant Attorney General to said commission and I quote his report for your information.

"In pursuance to your request I am herewith submitting to you a brief summary and status of cases handled by me as Special Assistant Attorney General to the Alabama Public Service Commission since my appointment April 1, 1927, up to and including September 30, 1928, which are as follows:

In the Circuit Court of Montgomery County—In Equity—Southern Railway Company, a Corporation, Complainant, vs. Alabama Public Service Commission, Respondents.

"This is a case made by bill in equity for injunction to restrain the Alabama Public Service Commission from enforcing its orders with reference to the repairs and extensions to the railroad company's freight depot in the Town of Greensboro, Alabama.

"This case was pending at the time I became attorney for the commission, and has been by me settled and dismissed by the complainant, the repairs and extensions ordered by the commission having been made in accordance with the commission's orders, and to the satisfaction of the people of the Town of Greensboro, Alabama."

In the Circuit Court of Montgomery County—In Equity—Southern Railway Company, a Corporation, Complainant, vs. Alabama Public Service Commission, Respondent.

"This case was made by bill in equity for injunction to restrain the Alabama Public Service Commission from enforcing its orders with refence to repairs and extensions to the railroad company's passenger depot in the Town of York, Alabama.

"This case was pending at the time I became attorney for the commission, and has been by me settled and dismissed by the complainant, the repairs and extensions ordered by them having been made in accordance with the commission's orders, and to the satisfaction of the people of the Town of York, Alabama."

In the Circuit Court of Montgomery County—In Equity—Southern Railway Company, a Corporation, Complainant, vs. Alabama Public Service Commission, Respondent.

"This is a case made by bill in equity for injunction to restrain the Alabama Public Service Commission from enforcing its orders requiring said railroad company to build a new passenger station in the City of Huntsville, Alabama. The bill for injunction was filed July 1, 1927, and after formal pleadings the case was tried on its merits before Hon. Walter B. Jones, Circuit Judge, sitting in equity, and on July 26, 1928, said judge entered a final decree making the injunction permanent, thereby restraining the Alabama Public Service Commission from enforcing or attempting to enforce said orders, and from seeking to recover any penalties, forfeitures or fines imposed by statutes of Alabama for a failure to comply with the orders of said commission.

"During the pendency of this litigation, the Southern Railway Company, complainant, proceeded to make extensive repairs and improvements to its old passenger station, sheds and grounds, expending the sum of six thousand dollars in said repairs, extensions and improvements, thereby making said passenger station, adequate, comfortable and sanitary, thereby giving the people of Huntsville adequate depot facilities.

"It was my opinion that after said railway company made the repairs and improvements above referred to, that the case should not be reversed on appeal to the Supreme Court of Alabama, therefore no appeal was taken on behalf of the Alabama Public Service Commission."

In the Circuit Court of Montgomery County—In Equity—Alabama Public Service Commission, Complainant, vs. St. Louis-San Francisco Railway Company, a Corporation, Respondent.

"This case is made by bill in equity by the Alabama Public Service Commission, praying for the injunction to restrain the St. Louis-San Francisco Railway Company from building a new combined passenger and freight depot in the Town of Atmore, Alabama, without first having applied for and obtained a permit from the Alabama Public Service Commission as provided by the statutes of Alabama. The temporary restraining order was issued by Hon. Leon McCord, Circuit Judge, on August 9, 1928, and in compliance with said restraining order so issued the railway company promptly ceased work on said combined passenger and freight depot.

"This case is still pending. The railway company, the City Council of the Town of Atmore and the Alabama Public Service Commission have had several conferences with reference to the location and plans for said new depot, and it is probable that an agreement will be reached by all parties concerned that will meet with the approval of the Alabama Public Service Commission and all persons concerned."

In the Supreme Court of the United States, on Appeal from the District Court of the United States for the Northern District of Alabama—State of Alabama and Alabama Public Service Commission, Complainants, vs. The United States of America, Atlantic Coast Line Railroad Company, Seaboard Air Line Railway Company, et al.

"This case is made by the Alabama Public Service Commission who filed a bill in equity in the United States District Court for the Northern District of Alabama on December 23, 1927, seeking to set aside orders of the Interstate Commerce Commission and to enjoin various railroads from seeking to file and make effective tariffs in accordance with said orders on fertilizer and fertilizer materials hauled in intrastate traffic in Alabama, which would make a large increase in freight rates on fertilizer and fertilizer material hauled in intrastate traffic in Alabama.

"The United States answered the bill, and the Interstate Commerce Commission intervened as a party defendant, and the various railroads made party defendants answered said bill.

"Three judges, two circuit and one district judge, heard the case in New Orleans, La., and without writing any opinion denied an injunction. An appeal has been taken to the Supreme Court of the United States from such order denying, after notice and hearing, the interlocutory injunction prayed for. The record has been printed and filed in the Supreme Court of the United States according to the rules of said court, and will be set down for argument on some date in the future.

In the Supreme Court of the United States on Appeal from the United States District Court for the Middle District of Alabama—St. Louis-San Francisco Railway Company, a Corporation, Complainant, vs. Alabama Public Service Commission, Respondent.

"This case was made by bill in equity praying for an injunction against the Alabama Public Service Commission by St. Louis-San Francisco Railway Company, seeking to enjoin said commission from enforcing any penalties and forfeitures against said railway company for discontinuing two of its passenger trains heretofore running and serving stations on their line of railroad between Carbon Hill, Alabama, and Amory, Mississippi, without first having filed request and getting permission of the said Alabama Public Service Commission in violation of Section 9713 of the Code of Alabama, 1923. This case was set for trial and heard at New Orleans, La., on July 25, 1928, by one circuit judge and two district judges. After argument being heard and briefs submitted, the court on August 17, 1928, handed down its opinion and decree, in which said court denied the interlocutory injunction prayed for by complainant.

"Within the time allowed by law complainant gave notice of appeal to the Supreme Court of the United States, which was allowed by the court. The temporary injunction was reinstated upon the giving of a $16,000.00 bond payable to the State of Alabama. This case is now pending on appeal."

In the Circuit Court of Jefferson County—In Equity—State of Alabama vs. J. L. Tanner, C. J. Balew, J. R. Smith, E. D. Pointer, J. F. Roberts, J. F. Hill, Arthur House, A. Z. Cooper, Forest Borders and G. D. Horton.

"This case was on appeal from an order of the Alabama Public Service Commission, and taken under Section 42 of the Alabama Motor Carrier Act of 1927. These defendants were cited by the Alabama Public Service Commission to show cause why they should not be construed as motor carriers within the meaning of the Motor Carrier Act of 1927. The defendants appeared before said Commission, and after hearing all the evidence the Commission made an order, decreeing that they were motor carriers within the meaning of said Act. From this order of the Commission the defendants appealed to the Circuit Court, in equity. That on April 26, 1928, the case was tried de novo by the judge without a jury, and the court after hearing argument made and entered a decree upholding the decision of the Alabama Public Service Commission and holding that the defendants were motor carriers under said Motor Carrier Act of 1927. From this order the defendants gave notice and perfected their appeal to the Supreme Court of Alabama. After said appeal was perfected, the defendants all dismissed their appeals, thus leaving the order and decree of the Circuit Court in full force and effect."

In the Supreme Court of Alabama, on Appeal from the Circuit Court of Jefferson County, Alabama—J. R. Smith, Appellant, vs. State of Alabama, Appellee.

"This defendant was arrested and 'charged by affidavit and warrant with violating the "Alabama Motor Carrier Act of 1927."' The case was tried on an agreed statement of facts, and prosecuted by the solicitor of Jefferson County. The trial judge without a jury adjudged the defendant guilty as charged in the complaint and imposed a fine of $50.00 and costs on defendant. From the judgment of conviction the defendant appealed to the Court of Appeals of Alabama, a brief was filed by me in behalf of the State, the case was reversed and rendered. An application for rehearing was duly made and overruled by the Court. A petition for certiorari to the Supreme Court was duly filed in behalf of the State and the case carefully briefed. The case is now pending in said Court.

"This case involves the construction of the Motor Carrier Act of 1927."

In the Circuit Court of Jefferson County, Alabama—Peoples Finance & Thrift Company, a Corporation, vs. James F. Hawkins, as Tax Collector of Jefferson County, Alabama.

"This is a civil suit against the Tax Collector of Jefferson County, Alabama, for the sum of $4,845.16 collected by the Tax Collector from Plaintiff. The suit is to recover back from the Tax Collector the above

sum with interest on the grounds that said amount was illegally paid, and that plaintiff was not due any ad valorem tax on its said capital stock on October 1, 1927, as provided under Section 25 of an Act entitled, "An Act in reference to and to further provide for the general revenue of the State of Alabama," approved July 22, 1927.

"This case involves the revenues of the State of Alabama, Jefferson County and the City of Birmingham.

"The County of Jefferson and the City of Birmingham have instructed their attorneys to defend said suit, and at your direction I have filed pleadings on behalf of the State of Alabama. The case is now pending.

"There has been a large number of complaints sent to me by the Alabama Public Service Commission with reference to persons violating the 'Alabama Motor Carrier Act of 1927'. In each instance I have sent them to the solicitor of the county in which the violations have occurred, with instructions that the matter be thoroughly investigated, and after investigation should the facts justify it, to commence prosecutions. There have been several prosecutions commenced in several counties, and are now awaiting a decision of the Supreme Court in the case of J. R. Smith vs. the State of Alabama, which is a test case as to the meaning of said law.

"Since my appointment by you as Special Assistant Attorney General to the Alabama Public Service Commission I have performed all legal services called for by said Commission, and have at all times been available to render legal services.

"Besides my duties as Attorney for the Alabama Public Service Commission I have cheerfully rendered all other services required by you as Attorney General of Alabama.

"In concluding this report I desire to express my thanks for your cooperation and many courtesies shown me in carrying on this work."

SOLICITORS

Work Outside of Circuit

By authority of Section 860, Code of Alabama, 1923, the Attorney General may direct any solicitor to aid and assist in the investigation or prosecution of any cause in which the State is interested, in any other circuit or county than that of the solicitor so directed. Acting in obedience to the orders of the Attorney General such solicitor has all the powers and authority imposed upon the solicitor of the county or circuit to which directed to enter. In several instances, under the authority thus granted, I have transferred circuit, deputy and county solicitors to other territory in the State because of emergencies existing, and for the investigation and prosecution of certain causes. In most instances I have had the full cooperation of the local prosecuting attorneys in obedience to such orders and I desire particularly to commend the extraordinarily efficient and faithful work of Circuit Solicitor Bart B. Chamberlain in this regard.

I desire to invite attention to the fact that, though the Attorney General is clothed with this power stated, the law provides no penalty for the failure of a solicitor, without sufficient cause, to perform duties which he has been directed by the Attorney General to accomplish. It is interesting to note, however, that the same power granted to the Attorney General to transfer solicitors for the prosecution of criminal cases is given the Chief Justice of the Supreme Court (Section 10298) and that a penalty is provided for the failure of the solicitor to perform duties thus directed by the Chief Justice (Section 10303, Code of Alabama, 1923).

The Chief Justice does not exercise this authority granted him because he takes the position apparently that the transfer of prosecuting attorneys is a matter primarily and properly a function of the Attorney General's Department.

In my judgment the law granting the Chief Justice power to transfer solicitors should be repealed and a law should be enacted providing a penalty for the failure of a solicitor, without sufficient excuse, to obey the orders of the Attorney General when ordered to duty outside of his regular territory.

CRIMINAL INVESTIGATIONS

The Attorney General is empowered to conduct investigations of the criminal law. He has this authority both as an inherent power of the office and by statute and the Legislature has wisely provided that he may incur, with the approval of the Governor, such expenses as may be necessary in the investigation of violations of the criminal law and in the prosecution of any civil cause in which the State is interested or the State's revenue is involved.

For the first time in the history of the Attorney General's Department, this investigational power of violations of the criminal laws of the State has been exercised by me on somewhat an extensive scale. In no other administration was the power exercised to any appreciable extent. In my endeavors in this particular, I have merely followed the law, considering it my duty, as well as within my power to exercise this authority with the approval of your Excellency, who has approved all expenditures made for such purposes, and without whose approval of same I could not have accomplished the results obtained. There was an effort made at the beginning of my administration by a few parties in the Legislature to take from the Attorney General's Department this power to investigate crime by curtailing to a nominal sum the amount which might be expended for such purposes, but the Legislature and your Excellency wisely saw the disastrous results to law enforcement which would obtain in the event of the accomplishment of the design.

In my conduct of criminal investigations, I have been cautious in my efforts not to duplicate the work properly devolving upon and susceptible of accomplishment by any other agency, and so in most instances have confined this work to special matters where there appeared a need for investigation by this department which is separate and independent of all others.

I shall not attempt to review in detail the criminal investigational work of this office for the Biennial Period of this report, first, because such a

review would take up too much space in the report, and second, because by reason of public policy I do not consider it desirable to publish these secret investigations, the conduct of which are well known to your Excellency and with the results of which you have, from time to time, been acquainted by me. I shall, however, briefly note some of the outstanding investigations conducted:

Betting. This office, with the approval of the Governor, conducted an extensive investigation of race-track gambling in Mobile in 1927, and as a result of same, for the first time in the history of the office, the Attorney General's Department obtained pleas of guilty by more than a score of persons caught in the raid conducted.

Houses of Ill Fame. At the direction of the Governor, this office conducted an extensive investigation of this situation in the City of Montgomery and presented a report thereon. Likewise, the evidence was presented to the Grand Jury of Montgomery County, and, in my judgment, was clear and amply sufficient to show the deplorable condition then existing, but the inquisitorial body seemed not to desire to indict the alleged guilty parties. This evidence was afterwards brought to the attention of a committee of the Legislature along with proposed bills seeking to amend the laws with regard to prostitution in such way as that there might be more satisfactory results obtained by the prosecuting officials, but the Legislature declined to enact any laws relating to this subject.

In another part of this report I am reiterating my recommendations as to the passage of laws which I regard needful in such matters.

Floggings. In 1927 public attention was directed to the occurrence of a large number of floggings throughout the State by masked bands, particularly in Blount, Jefferson, Talladega, Randolph and Crenshaw counties. Your Excellency caused investigations to be conducted in Blount, Jefferson, Randolph and Crenshaw. No indictments or convictions having been accomplished thereby, the Attorney General, independent of other agencies, but with the approval of your Excellency, launched an investigation of these matters particularly in Blount, Jefferson and Crenshaw, and personally, with the aid of the circuit solicitors in the three particular counties named and with the aid of Assistant Attorneys General from this office, presented the evidence obtained to the grand juries in the three respective counties with the result that there were obtained in those three counties of Blount, Jefferson and Crenshaw approximately 125 indictments, the major portion of which were in Crenshaw County. Later, the Attorney General with the aid of the officials named, succeeded in obtaining pleas of guilty by 5 of the 7 indicted in Blount County, and they have since served their sentences. The two remaining indicted parties in Blount County were tried and convicted in the Circuit Court and each sentenced to a term of from 8 to 10 years in the penitentiary on charges of kidnaping. These two latter cases have been appealed and are now pending before the Court of Appeals. The indictments in Jefferson have not been pursued further but were left to the disposition of the Circuit Solicitor. Of the 101 indictments in such matters obtained in Crenshaw County, two were tried and acquitted under conditions with which your Excellency and the public generally is fully familiar. The remaining indictments were left to the disposition of the circuit solicitor, and because of conditions with which your Excellency and the public is

familiar, have not been pursued. Suffice it to say, however, that these investigations, the prosecutions and the convictions obtained, seem to have ended the floggings that were being perpetrated throughout the State by certain masked persons.

I desire, right here, to state that the prosecuting officials and the grand juries mentioned, in the investigation and prosecution of these particular cases, met with most every conceivable handicap, apparently due primarily to certain affiliations of those who conjured the obstacles.

In the investigation of these particular matters I had the whole-hearted cooperation of Solicitors W. G. Rains, Jim Davis and Calvin Poole. To their cooperation with the efficient work of loyal investigators of this office and the faithful and fearless discharge of duty of Assistant Attorneys General Thos. E. Knight, Jr., and John J. Haynes is due the accomplishment of the results obtained.

The Monteabaro Case. The facts in this case are well known to the public. I personally conducted a three months' investigation of this mysterious affair by the direction of the Governor and with the whole-hearted opposition of certain local and State forces. The matter was presented by me to the grand jury with the aid of assistants from this office. The grand jury indicted two parties for the murder of the young lady. Under tremendous handicaps, both local and State, we proceeded to the trial of one of them with the result that he was acquitted. Your Excellency is fully familiar with the evidence presented, and the people of this State, as well as Shelby County, know the conditions under which the indicted party was acquitted.

Other Homicides. In addition, we investigated 36 homicides throughout the State. As a result 26 persons were indicted and the 7 remaining cases are awaiting action of the grand juries. In addition to this, we investigated the murder of Oliver Lee, and through the activities of the investigators and Assistant Attorney General Brassell, six parties were indicted by the grand jury, three of them were convicted, with a total of thirty-three years in the penitentiary, and the remaining cases are pending.

State Narcotic Act. We succeeded in apprehending a party illegally in pessession of several thousand dollars worth of narcotics. The party was indicted under the State law and has since pleaded guilty and been sentenced to the penitentiary. This was the first narcotic case of any importance under the Act passed by the last Lesgislature.

Violating Prohibition Laws. Investigators working out of this office arrested 76 persons for violating the prohibition laws. Fifty-three were indicted and convicted, or pleaded guilty, and also fines amounting to approximately $5,000.00 were assessed against defendants. Five defendants received sentences of ninety days in addition to fines. Five others received sentences of six months in addition to fines. Three defendants received sentences to the penitentiary. Under this caption are included all violations of the prohibition laws. This work has been more or less incidental, as the State Law Enforcement Department was originally created as a prohibition unit and makes apprehension of this type of law violation its specialty.

Rape. My investigators have investigated four cases of rape. Indictments were returned in all cases. Three of the defendants are held without bond.

Arson. At the request of the State Fire Marshal, we investigated one case of arson with the result that one party was tried and convicted and sentenced to six years in the penitentiary.

Highway Robbery. Operators investigated an alleged highway robbery with the result that three parties were arrested, indicted, tried and convicted. Two of them were sentenced to thirty-five years in the penitentiary, and the third to ten years in the penitentiary.

Ill Treatment of Prisoners. At the request of the Governor, operators investigated the alleged ill treatement of a person by an arresting officer. The investigation is completed and the matter is to be presented at the next session of the grand jury in that particular county.

Jail Delivery. Investigation was made of a jail delivery in Colbert County. Investigation resulted in apprehending two of the guilty parties, who were indicted and pleaded guilty and were sentenced to the penitentiary.

Devices of Chance. With the approval of the Governor, a thorough investigation was made of the alleged illegal operation of certain gaming devices in approximately ten counties in the State. A large number of these machines were seized and approximately fifty convictions or pleas of guilty were obtained. A number of cases are still pending. We succeeded partially in ridding some localities of the menace of these devices, but there seems to be a laxity on the part of certain peace officials in rigorously enforcing the laws prohibiting lotteries and games of chance.

As a result of my experience in these investigations, I recommended certain legislation deemed helpful to the enforcement of the law, but the Legislature saw fit not to enact any additional laws that would aid the prosecuting officers and peace officers generally in such matters. In a subsequent part of this report I have reiterated my recommendations for the consideration of Your Excellency.

Coffee County. This office prosecuted three criminal cases in this county with the result that two convictions were had by Assistant Attorney General Rayburn.

Miscellaneous. In addition to the above, the operators from this office have investigated a number of miscellaneous matters, including election frauds, gaming, obstruction of justice, neglect of duty on the part of local public officials, etc. However, I do not deem it necessary to discuss this investigation at this time. Investigations have covered the whole field of crime from the lowest to the highest, and I have required that each investigator submit a detailed report of his activities and these reports are on file. The appointment of all investigators in this department were with the approval of Your Excellency, and they are always at his immediate disposal.

Sixteenth Judicial Circuit. During this Biennial Period due to the illness of the Circuit Solicitor, it became necessary for me to take charge of the Circuit Solicitor's work in the Sixteenth Judicial Circuit composed of the counties of Etowah, Blount and St. Clair. In doing so I directed Special Assistant Attorney General J. W. Brassell to handle all the grand jury work and criminal prosecutions and I detailed three investigators from this office to assist him in investigations. We have been conducting this work for about four months and during that time this office alone has secured 179 indictments in Etowah County, 38 indictments in Blount County and 26 indict-

ments in St. Clair, or a total of 243 indictments secured in the judicial circuit up to the close of the Biennial Period through the activities of this office. We have been able to solve many mysterious crimes that had occurred in this territory. At the Spring Term of the Circuit Court of Etowah County alone, through the activities of this office 137 true bills were obtained. We investigated the Attalla Bank robbery and secured the conviction of two parties in connection therewith, with a total of fifty-five years in the penitentiary. This was perhaps one of the most notorious robberies in the State. At the Fall Term of the Etowah County Circuit Court we obtained forty-two true bills. It is interesting to note that at the Spring Term of the Grand Jury in Etowah County a large number of indictments were returned for the violation of the prohibition laws, and through the activities of this office, we succeeded in obtaining convictions in approximately 85% of these cases at the Fall Term of said Court. Again at the Fall Term of said Court it is interesting to note that there were no indictments for violations of the prohibition laws in this County, although careful examination was made of every witness, and each was questioned as to prohibition law violations. This, in my judgment, shows the salutary effect resulting from real enforcement of the prohibition laws through the indictments at the Spring Term and the subsequent convictions. In our work in the Grand Jury and in the Circuit Court of Etowah County we had the loyal cooperation of the people of the County and every public official thereof, and I desire herein, especially to express our deep gratitude and appreciation of Circuit Judges O. A. Steele and Woodson J. Martin, who aided us in every way.

All old homicide cases in Etowah County were investigated by the investigators from this office and indictments were returned in most instances. At the Fall Term of the Circuit Court of Etowah County for 1928, through the efficient work of my investigators and Assistant Attorney General Brassell we obtained sentences in felony cases approximating three hundred years in the penitentiary.

We held the grand jury for the Fall Term of the Circuit Court in Blount County. As stated above 38 true bills were returned. Also we secured life imprisonment in the case of State vs. Robert Russell, charged with murder.

In St. Clair County, by my direction, Hon. Joe M. Pelham, Jr., Circuit Solicitor of the First Judicial Circuit, was transferred there to hold the grand jury, and as stated, 26 true bills were returned.

As a result of these activities in this particular circuit, the dockets are now in excellent shape and right up-to-date. We are still continuing our activities there at the request of the solicitor and since the close of the Biennial Period a large number of convictions have been obtained.

To the unfailing devotion to duty of Assistant Attorney General Brassell, and the investigators from this office who aided him, are due the splendid results obtained.

CORPORATION—DELINQUENT TAXES, CHARTER FEES, PENALTIES, ETC.

This work has been performed by Hon. Willard McCall, Special Assistant Attorney General, and during the Biennial Period 1926-28, under his contract of employment, he has made the following collections which have been turned into the Treasury:

1926-27

Delinquent Coal Tonnage Tax	$ 20,376.86
Penalties and Charter Fees from Foreign Corporations for violating Section 7209	1,445.68
Permit Fees from Foreign Corporations	3,400.00
Total	$25,222.54

1927-28

Delinquent Coal Tonnage Tax	$ 4,669.12
Penalties and Charter Fees from Foreign Corporations for violating Section 7209 of Code	2,899.98
Tonnage Franchise Tax	2,722.34
Gasoline Oil Tax	2,748.80
Permit Fees by Foreign Corporations	4,710.00
Carbonic Acid Tax	200.00
Delinquent Telephone Privilege License Tax	186.90
Total	$18,137.14
Recapitulation 1927 and 1928	$43,359.68

1928

Additional Delinquent Franchise Tax and Delinquent Permit Fees from Domestic Corporations	8,932.17
Grand Total	$52,291.17

This Special Assistant Attorney General has disposed of the following cases:

State vs. Sims, Shelly and Chapman, Inc., Baldwin County.
State vs. White Iron Co., Tuscaloosa County.
State vs. Novaculite Construction Co., Lamar County.
State vs. Lock Joint Pipe Co., Jefferson County.
State vs. Cox and Bryson Paving Co., Jefferson County.
State vs. Southern Tire Co., Jefferson County.
State vs. Harry Alexander, Inc., Jefferson County.
State vs. William S. Rice, Inc., Jefferson County.
State vs. Seagrave Corporation, Jefferson County.
State vs. Sam Findley, Inc., Walker County.
State vs. Greil Bros., Montgomery County.

The following litigation is in his hands, and is still pending:

State vs. Bay Minette Land Co., Baldwin County.
State vs. Ft. Payne Co., DeKalb County.
State vs. Fordson Land Co., Colbert County.
State vs. Henderson Ship Building Co., Mobile County.
State vs. Red Feather Coal Co., Bibb County.
State vs. Shakelford Mining Co., Walker County.
(1) State vs. Townley Coal Co., Walker County.
(2) State vs. Townley Coal Co., Walker County.
State vs. I. O. Drewry Contracting Co., Walker County.
State vs. Thomas Creek Coal Co., Walker Count.
State vs. Dixie Mining Co., Walker County.
State vs. Rogers Talty Coal Co., Jefferson County.
(1) State vs. Kershaw Mining Co., Jefferson County.
State vs. National Cement Co., Jefferson County.
State vs. Rogers Talty Coal Co., Jefferson County.
(2) State vs. Kershaw Mining Co., Jefferson County.
State vs. Fain Service Station, Jefferson County.
State vs. Bishop Babcock Sales Co., Jefferson County.

OTHER CIVIL LITIGATION

Independent Gin and Warehouse Company, a Corporation, et al, Complainants, vs. S. M. Dunwoody as Commissioner of Agriculture, et al, Respondents. In the United States District Court at Montgomery, Alabama. Pending.

The State of Alabama, Plaintiff, vs. Peoples Auto Company, Defendant. Pending in Circuit Court of Montgomery County.

Henry Clifton vs. State. This involved the constitutionality of an Act of the Legislature of 1927 imposing a three per cent tax on gross receipts of busses. Decision in Appellate Court in favor of state.

Exchange Drug Co. vs. State Tax Commission, et al. Involved the collection of taxes imposed by subsection 2-j of Section 2, of the Revenue Act of 1927. Decision in Circuit Court adverse to complainant; appealed to Supreme Court of Alabama, decision adverse to complainant; now on appeal to the Supreme Court of the United States.

State of Alabama vs. Town of Springville, Alabama. This suit involves the construction of the Act known as the Alabama Highway Code and the payment of fines collected for violation of rules of the road. Case pending in lower court.

Ed. C. Taylor vs. Walter K. McAdory, Chief Law Enforcement Officer. A suit involving the detention of a slot machine. Judgment for plaintiff because there was no evidence that the machine was used for gambling purposes.

J. W. Ham vs. Alabama Real Estate Commission. Writ of prohibition filed in the Circuit Court of Jefferson County against the Commission. Case pending.

State vs. W. J. Noles. A claim for trespass on State lands involving amount of $650.00. Case pending.

State vs. M. P. Curran. A proceeding instituted in the Lauderdale County Circuit Court involving the State Bread Law. Lower court held law unconstitutional. Appealed to the Supreme Court where it is now pending.

Josephine Jones vs. State Pension Commission. A proceeding in the Circuit Court of Montgomery County seeking to force the Commission to place name of complainant on pension roll. Decision in favor of State.

State vs. McGill Institute. Involves collection of certain ad valorem taxes. Decision in lower court adverse to State. Case now pending in the Supreme Court.

R. A. Olive vs. Fayette County Court of County Commissioners and State Highway Commission. An injunction sought against defendants to enjoin use of certain highways in Fayette County. Now on appeal.

Durr Drug Co. vs. S. M. Dunwoody, Commissioner of Agriculture and Industries. An action in assumpsit involving constitutionality of certain provisions of the Agricultural Code. Decision in lower court in favor of State.

County Board of Education of Clarke County vs. S. H. Blan, State Auditor. Proceeding in the Circuit Court of Montgomery County involving constitutionality of an Act approved September 6, 1927 (General Acts, 1927, page 607). Decision in favor of State.

State of Alabama vs. J. A. Eason, Maryland Casualty Co., and National Surety Company. A suit in equity in the Circuit Court of Montgomery County involving certain school funds of Dale County. Decision in favor of State with judgment for $30,000.00 now pending on appeal in the Supreme Couwrt.

Warehouse Co. vs. S. M. Dunwoody, Commissioner of Agriculture and Industries. Application for injunction in the United States District Court. Denied. Decision in favor of State.

State vs. American Book Co. A proceeding in equity in the Circuit Court of Montgomery County to restrain respondent from charging the State more for textbooks than is charged in Tennessee. Injunction granted by the Circuit Court. Reversed by Supreme Court and remanded for further action. Now pending in Circuit Court.

State of Alabama vs. United States of America. Suit filed by the State in the United States Court of Claims involving the matter of collecting certain taxes for the privilege of developing and selling hydro-electric power by the United States at Muscle Shoals. Now pending in said Court.

W. B. Allgood as State Auditor vs. Hollywood Realty Co., a Corporation. In the Court of Appeals of Alabama on appeal from the Circuit Court of Montgomery County, Alabama, on judgment granting writ of mandamus. Writ of mandamus granted by Circuit Court; affirmed on appeal by Court of Appeals; abated by expiration of term of office of appellant; revived in the name of S. H. Blan, as State Auditor; application for certiorari to Supreme Court; writ granted; ruling on proposition of law reversed and case sent back to the Court of Appeals for further consideration. Reversed and rendered in favor of S. H. Blan, as State Auditor, by Court of Appeals.

State of Alabama by Charlie C. McCall, its Attorney General, vs. Fidelity and Deposit Company of Maryland, a foreign corporation. Filed in the Circuit Court of Houston County, Feb. 28, 1928. Judgment for plaintiff for $7,000.00 and costs of suit.

George A. Dorlan, Tax Collector of Mobile County, vs. S. H. Blan, State Auditor. Petition for writ of mandamus to Circuit Court of Montgomery County. Judgment for defendant. Appealed to Court of Appeals. Judgment affirmed.

C. H. Roquemore vs. Highway Commission, et al. Petition for mandamus. In the Circuit Court of Montgomery County. Judgment for petitioner. Appealed to Supreme Court. Affirmed.

Mobile Gas Co. Matter. This is a Board of Compromise matter. An agreement was reached between the Board of Compromise and the Mobile Gas Company and the Central Trust Company of Illinois over the issuance of bonds of the Mobile Gas Company. The filing tax upon the bonds was the matter agreed upon. It appears that the agreement has been carried out by all parties. The agreement binds the Mobile Gas Company to report each issue of the bonds to the Probate Judge and to pay the legal tax due thereon. The State Tax Commission is unable to tell whether or not all taxes have been paid.

Last payment December 11, 1926	$ 275.85
Total amount	1,774.50
Initial payment	975.00
Grand Total	$ 2,749.50

L. E. Brown vs. Harwell G. Davis, Attorney General, Charlie C. McCall, Attorney General. This was a mandamus proceeding growing out of a contract of employment of Brown as an Assistant Attorney General. The writ was granted in the Circuit Court of Montgomery County. Appealed to Supreme Court of Alabama. Reversed and remanded. Judgment for petitioner in Circuit Court—appealed again to Supreme Court. Reversed and remanded by Supreme Court. This decision terminated the cause in favor of the State.

Pike County Investigations. This matter arose under Mr. Davis' administration, growing out of examination of accounts of Pike County officials by Examiner's Department. Several indictments were returned for embezzlement and conspiracy against the officials examined. The cases were prosecuted by Solicitors Chamberlain and Ben Perry. All cases were terminated against the State by verdicts of not guilty. Twenty-three cases against Jinright **pending** for embezzlement. Criminal matters mentioned here because pending.

Mt. Carmel Coal Co. and Beechy Hollow Coal Co. This matter involves the tonnage tax due by the Mt. Carmel Coal Company and the Beechy Hollow Coal Company. Mr. Chas. E. Rice is president of both companies. The file shows demand made by this office during Davis' administration for tax due. Matter pending. Mt. Carmel Coal Company bankrupt.

S. R. Batson vs. State, ex rel Jim Davis. This matter involved the recommendation of the Grand Jury of Jefferson County with regard to certain members of the Jefferson County Board of Revenue. The defendant, Batson, a member of the Board of Revenue, was first acquitted by a jury of Jefferson County. The verdict of the jury was set aside by Judge W. L. Parks, presiding, and a new trial ordered On the second trial, the defend-

ant, Batson, was found guilty of willful neglect of duty and impeached. From the judgment of the Circuit Court of Jefferson County the defendant appealed. The Supreme Court affirmed the judgment of the lower court and the matter was thus terminated. The charges against Batson involved corruption in office and willful neglect of duty. Hon. O. R. Hood was employed by Mr. Davis to represent the State. It was under this administration that the matter was terminated.

State vs. Bessemer Coal and Iron Co. This matter involved the collection of a note for coal sold by the State through the Bessemer Coal and Iron Company to J. A. and J. S. Williams. It appears that the note became past due and was renewed upon payment of interest on February 3, 1926.

Knox Investigation. This investigation conducted by Attorney General Davis was a result of the death of one Knox at Flat Top Mines. The investigation resulted in the indictment by the Grand Jury of Jefferson County of C. R. Davis, Cecil Houston, Homer Anderson, Joe Payne and Albert Lewis, for murder. C. R. Davis was tried and acquitted. Davis was the warden at Flat Top. Other cases left to disposition of Circuit Solicitor.

W. A. Gunter vs. Alabama School for Deaf. This was a bill in equity to quiet title to lands. The State, by Mr. Tate, Assistant Attorney General, moved to dismiss the bill on the ground that it was a suit against the State.

State vs. Guy Higgins. Civil suit for recovery of privilege tax due by wholesale lumber dealer. The suit was improperly brought in Autauga County and a plea in abatement was confessed. Handled in term of predecessor.

State vs. Braehead Coal Mining Co. Suit for tonnage tax. Defendant adjudicated bankrupt. State acquired deed in full satisfaction of its lien for the tax to the property owned by the defendant. Cause started under Davis —consummated and settled by me.

State vs. K. B. McKenzie. Claim for debt owed State for case brought. This matter, a balance of $50.00, was handled by me through the Circuit Solicitor and collected for the State.

State vs. Charles C. Robertson. Judgment for $8,500.00 in favor of State. U. S. Fidelity and Guaranty Company subrogated, by agreement, to rights of State. This suit grew out of default of Robertson as Tax Collector of Morgan County. Judgment against both U. S. Fidelity and Guaranty Co. and Robertson. Judgment paid.

Walton-Vann Election Contest. This grew out of apparent irregularities of primary election for Solicitor. Solicitor Vann disqualified. Newton S. Walker indicted for violating primary election laws in term of Mr. Davis. Judge S. L. Brewer sustained plea in abatement to indictment and discharged defendant.

State Board of Administration vs. George Johnson. Claim for damage to State Child Welfare car. Matter was settled by Johnson's paying amount claimed—$34.00. This was turned over to the Board of Administration.

State vs. P. V. Graham. Bill in equity to require Graham to comply with health laws. To drain pond at Graham Haven and clear area. Bill filed at instance of Board of Health. Suit withdrawn upon Graham's compliance with requirements.

Charlie C. McCall, as Attorney General of Alabama, vs. Grand Lodge Knights of Pythias of Alabama (Colored), Etc. This case is reported in 115 So. page 254, and the facts are there set forth.

I wish also to call attention to **State vs. Clyde Reese Batchelor,** which was a criminal proceeding handled by this office before the Supreme Court of the United States resulting in a decision in favor of the State. This is the only criminal proceeding we handled before the United States Supreme Court during this period.

RECOMMENDATIONS OF NEEDED LEGISLATION

Based upon experience of the Attorney General and his Assistants during the Biennial Period just closed, I desire to recommend to your Excellency for consideration the following matters which I think should be given attention by the next session of the Legislature, and the enactment of laws in regard to which will, in my judgment, result in better enforcement of law:

First. I call your attention to the recommendations made by Hon. Harwell G. Davis, former Attorney General, in the second paragraph of page 9 of the Biennial Report of 1924-26, and renew those recommendations of my predecessor.

Second. There should be created a State Bureau of Criminal Identification as a part of the Attorney General's Department, to function in connection with local and other state, and the National Bureau of Identification. This would materially aid in the apprehension of criminals.

Third. There should be a legislative reference section provided by law in the Attorney General's Department. This section would be of material aid to legislators in the preparation of bills introduced and could be utilized to great advantage in gathering data concerning legislative Acts in other states.

Fourth. The revenue laws of Alabama should be codified. As it is they are scattered throughout many volumes, including portions of the Code, and the whole matter is in a state of chaos.

Fifth. The State Law Enforcement Department as now functioning has absolutely no connection with the Attorney General's Department, and through its activities in regard to prohibition is largely duplicating the work that may properly be performed by local peace officials. To my way of thinking, regardless of being the incumbent of the Attorney General's Office at the present, it is ridiculous that there should exist in State government a department of peace officials making investigations daily and yet having no connection whatsoever with the Chief Prosecuting Officer of the State who directs the local prosecuting officials. I believe the Attorney General's Department should be the State Department of Justice and that the State Law Enforcement Department should be a part of it. This would not take from the Chief Executive any power vested in him, for he might still direct the Attorney General in matters of law enforcement and the State Peace Officers would be under the direction or supervision of that official trained in the law, whose duty it may become to step down into the local territory and assume charge of a criminal situation. There is no need for the continued existence of a department which merely duplicates the work of local peace officers.

Sixth. I recommend the repeal of those laws which makes it the duty of the individual justices of the Supreme Court of Alabama to render individual opinions on moot questions. In other words I recommend the repeal of the Advisory Opinion Act as amended. It merely makes of the Supreme Court a moot court, and such an august tribunal should not be required to pass upon moot questions. Furthermore that Act attempts to clothe the individual justices of the Supreme Court with duties which properly belong to the office of the Attorney General. It serves no useful purpose whatsoever and has been thought by some members of the Supreme Court of this State, as well as those of many other states, to be bad policy and bad law.

Seventh. I recommend the repeal of those Code sections giving the Chief Justice the right to transfer solicitors from one circuit to another. The Chief Justice does not exercise this authority but it is exercised by the Attorney General where the Chief Justice thinks it should properly be.

Eighth. A penalty should be provided by statute for the failure of a solicitor to obey the orders of the Attorney General when ordered from one circuit to another. Such a penalty is provided for failure to obey the orders of the Chief Justice in similar matters. Oftentimes, where the Attorney General must order a solicitor to another circuit on important litigation, difficulty is experienced in getting him to obey the order and this will cure the situation.

Ninth. The Attorney General and his duly authorized deputies should be empowered to administer oaths in criminal investigations in the same manner as such authority is given to the State Fire Marshal and the Banking Department. This will result in a tremendous saving of expense in many important criminal investigations.

Tenth. Definite provision should be made by law for placing important witnesses under bond for appearance where it is ascertained they are about to leave the State. As it stands, when a person is indicted for the commission of a crime and the case comes up for trial great difficulty is often experienced in obtaining necessary witnesses who have left the State or secreted themselves in the meantime. The law is indefinite on this point now.

Eleventh. All those statutes giving rewards to peace officials for apprehending violators of the prohibition laws and finding prohibited liquors should be repealed. It is ridiculous that one may obtain a statutory reward of $50.00 for apprehending and convicting a distiller and at the same time there is no statutory reward for the apprehension and conviction of dope fiends, burglars, thieves, robbers, murderers, embezzlers of public funds, etc. This system of rewards has resulted in one-sided law enforcement in Alabama. The average local peace official draws a scanty compensation and it is but natural that where he knows that every time he apprehends and convicts a distiller he will get $50.00 he will devote most all of his time, if not all of it, to lying out hunting for this sole type of law violator, oftentimes to the neglect of the enforcement of the laws against larceny, robbery, murder, etc. In my judgment the increase of unsolved murders and robberies, etc., is largely due to this pernicious system. I do not think it should be necessary constantly to hold up to a peace official the hope of a $50.00 reward for doing what he is in duty bound to do, viz.: enforce the law.

Twelfth. I recommend the passage of other criminal laws looking to the stamping out of houses of ill fame and the prostitution situation existing in certain hotels throughout the State. It should be a misdemeanor for a person to solicit for such a house or knowingly to transport persons to such a place. Our criminal laws dealing with this subject are cumbersome and ill-adapted to it and houses of ill fame flourish throughout the State untouched and unmolested alike by the local peace officials and the State Law Enforcement Department. They abound in Montgomery in the very shadow of the Capitol.

Thirteenth. Provision should be made for the confiscation and destruction of slot machines, other devices of chance and gambling paraphernalia generally as well as burglar tools and weapons illegally carried. We have no such laws at the present time.

Fourteenth. Every person or concern selling pistols and revolvers should be required to keep accurate records identifying the weapons and the persons to whom sold.

Fifteenth. It should be a violation of the law for one to impersonate a state, county or local peace official or any public officer of the State.

Sixteenth. All matters relating to automobile licenses should be in the hands of a State Commissioner of Motor Vehicles, under whom should function the State traffic police.

Seventeenth. The law should be made more forceful in the imposition of sentences upon second offenders of the prohibition laws. As it stands there are many instances right in Montgomery County where persons have been convicted many times of the possession of liquor and have never received higher penalty for such.

Eighteenth. The law should be amended so as to require the Attorney General to render an Annual instead of a Biennial Report.

Nineteenth. Provision should be made for subpoenaing witnesses from other states. It seems to me that the states could provide for this by agreement so that the subpoena of one state might be recognized in another state under certain conditions.

Twentieth. A law should be enacted providing for the exhumation of dead bodies where death is believed to have been occasioned by criminal means. This only applies to poison cases now.

Twenty-First. The Legislature should take from the Code of 1923 all those sections which do not properly belong therein under the Act adopting it, such as revenue laws, tax laws, game and fish laws, etc.

Twenty-Second. At the last session of the Legislature there was passed a bill known as "The Alabama Highway Code". This is not a Code but evidently those who aided in its preparation thought they were making a Code. There was no Act adopting it as a Code and, indeed, there should not be, for the reason that it is one of the most poorly constructed pieces of legislation that could have been enacted. Many traffic laws are left out. I recommend that this Act be repealed and that all matters dealing solely with traffic on the public highways be given more thorough study and that there be introduced at the next session of the Legislature a bill carrying the revised traffic laws, among other things giving Justices of the Peace jurisdiction in such matters.

Twenty-Third. During the Biennial Period 1926-28 there have been disposed of in the Circuit Courts of this State 16,348 criminal cases. Of this number there were 1,587 acquittals, 4,782 nolle prossed, and 677 abated or withdrawn. This means that 7,046 persons have been brought into the Circuit Courts of this State where there was not sufficient evidence to convict. This large number of acquittals, nolle prosequies and withdrawals clearly indicate that there is something wrong somewhere. In my judgment it indicates lack of proper attention to duty on the part of local prosecuting officials and that the officers entrusted with the duty of issuing warrants have been careless in not ascertaining if there was probable cause before issuance of warrants of arrest. It also indicates that the peace officers, in making the arrests, have been careless in ascertaining whether or not the evidence against the arrested party was sufficient. It hardly seems reasonable that so large a number of prosecutions could be instituted without sufficient testimony to convict. This promiscuous issuance of warrants of arrest and bringing people into Court without sufficient evidence to convict, costs the State many thousands of dollars and naturally creates a disrespect for law. Regard and respect for law comes not so much from the severity as from the certainty of punishment and swiftness with which it is administered.

In this connection it is interesting to note that, during this Bennial Period, there were 6,353 prohibition cases of various kinds in the Circuit Courts of the State. Of this number 3,758 were convicted, 582 were acquitted, and 1,811 nolle prossed, and 202 were abated or withdrawn. In other words 2,595 of the cases brought amounted to nothing. It seems absolutely unreasonable to me that such a condition as this should exist. It seems preposterous that the local prosecuting officials in the various circuits of this State should find it necessary to nolle prosse 1,811 cases against alleged prohibition law violators. The argument set forth above, in my judgment, applies equally well here, and I think that this matter should be brought to the attention of the Legislature.

I have not yet compiled the record of unsolved homicides and cases of homicides where the guilty parties were not apprehended. I shall have some data on this at the time of the final publication of this Biennial Report. However, the number of unsolved homicides is increasing daily. In a preceding part of this letter of transmittal I have outlined to you partially what I consider one of the principal causes for many homicides not being solved by local officials.

In conclusion I desire to express my deep gratitude for the cooperation which Your Excellency has given to me and to my forces in the discharge of the duty of Attorney General of the State.

Respectfully submitted,

CHARLIE C. McCALL,
Attorney General of Alabama.

OPINIONS

ATTORNEY GENERAL OF ALABAMA

October 4, 1926.

Hon. S. P. Rainer,
Judge of Probate,
Union Springs, Ala.

Dear Sir:

This acknoweldges receipt of your letter addressed to the Attorney General of date October 2, 1926. You speak of license for selling goods advertised as bankrupt stock.

In reply will say that license under Schedule 51 of Section 361 of the Revenue Act, 1919, is issued not by the year nor the half-year, but for the selling of a particular lot of goods which must be particularly described and identified in the application for the license. The amount of the license for selling such lot of goods is one hundred dollars for the state and fifty dollars for the county. When the license is issued to sell the lot of goods the licensee is not limited as to time in selling this lot of goods under this license, but it is unlawful for him to add any other goods to this lot of goods, and sell them under such advertisement. The license is to sell the particular goods described in the application for a license and none other, and if he sells any other goods than the goods described in the application, without taking out a license therefor, he is guilty of an offence against the criminal law in doing such business without a license.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

AAE/s

October 4, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have for reply your letter of September 27th, directed to the Attorney General.

You call attention to the case of a member of a court of County Commissioners who is agent for the Standard Oil Company, his compensation from said company being on a commission basis. You state that this agent of the Standard Oil Company (who is also a member of the County Commission) is selling to the county the larger part of the gasoline and oil it uses.

You desire a ruling as to whether or not this is in violation of the law, and further, if the Probate Judge is liable on his official bond for the amount of warrants issued to the Standard Oil Company in payment for such gasoline and oil.

Section 5024 contains an express inhibition against a member of the Court of County Commissioners selling or being pecuniarily interested in

the sale of any goods or supplies to the county. Upon conviction for such offense such member may be fined not exceeding one thousand dollars, and may also be imprisoned in the county jail or sentenced to hard labor for the county not exceeding twelve months.

You will note, however, that the inhibition here is directed against the **act of the individual member** of the Commissioners' Court. I find nothing in this section, or in section 5003, relative to public officers generally, which would render the Probate Judge liable on his official bond for issuing warrants to the Standard Oil Company for the reasonable market value of oil and gas had and received by the county, such claim having been regularly audited, passed and allowed and ordered paid, by the Commissioners' Court. Furthermore, in my opinion the County Treasurer would not be liable on his official bond for the payment of such warrants.

Yours truly,
J. FRED JOHNSON,
Assistant Attorney General.

JFJ/s

October 5, 1926.

Mr. M. V. Henry, County Treasurer,
Jefferson County,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 27th, directed to the Attorney General, which reads as follows:

"As Treasurer of Jefferson County, Alabama, I request your opinion in writing as to the following question of law connected with the discharge of my duties as such Treasurer.

"Hon. Thomas R. Lea, Judge of the Municipal Court of Birmingham, Third Division, has addressed to me an order to pay to A. F. James, Three Thousand Two Hundred ($3,200.00) Dollars 'in full of back salary due as bailiff of the Municipal Court of Birmingham, Third Division, from September 17th, 1925, to September 17th, 1926, and I am informed that other similar demands will be made in behalf of other bailiffs of other divisions of said court.

"The salaries heretofore paid to such bailiffs was at the rate of $60.00 per month. The claim is now made that they have been entitled to be paid at the rate of $150.00 per month since the Act of the Legislature of 1923, found on page 283 of the published volume of said acts. For your convenience reference is made to the following acts which bear upon the question: Local Acts 1915, page 231; General Acts 1915, page 25; General Acts 1919, page 455, section 19.

"I hereby certify to the truth of the facts hereinbefore stated and that the advice desired is necessary to the present performance of an official act that I must immediately perform, to-wit: the payment of or the refusal to pay such order.

"I have been advised of the opinion rendered by your office to the Hon. Thos. R. Lea, Judge, under date of September 8th, 1926, but I am informed that it is necessary for my protection to secure an opinion addressed to me as County Treasurer.

"In passing upon the question submitted, I should like for you to consider, 1st, whether any portion of the claim is now barred under section 228 of the Code of Alabama, also whether in the light of section 8 on page 234 of the Local Acts of 1915, and section 7 on page 528 of the General Acts of 1915, the Judge of said Court was authorized to appoint a bailiff, and also whether the Municipal Court of Birmingham is such a court of record as was meant and intended by section 19 of the Act of 1919 above referred to."

All of the questions you present have been answered by the writer in an opinion of September 8, 1926, directed to Hon. T. R. Lea, Judge of the Municipal Court of Birmingham with the exception of the question as to the statute of non-claims, Section 228 of the Code of Alabama. I am attaching hereto a copy of the opinion referred to above, and making same a part of this ruling.

As to Section 228 of the Code, I am of the opinion that it has no application to the claim in question. It only applies to such claims as are required by law to be presented to the Court of County Commissioners for auditing and allowance.

Opinions of Attorney General 1918-20, page 249.
State ex rel City of Mobile v. Board of R. & Ro.
Commissioners of Mobile County, 180 Ala. p. 514, 61 South. 814.
Dale County v. Gunter, 46 Ala. 118 (p. 135).
Commissioners Court of Limestone County v. Rather, 48 Ala. 433 (446).

The amount of the claim in question is fixed by statute, and the manner of its payment is fixed by statute. It is not required to be audited by the Court of County Commissioners. Section 2 of the Act of the Legislature approved Sept. 17, 1923 (Acts 1923, p. 283), after providing the amount of the salaries of bailiffs in Courts of Record in cities of Two Hundred Thousand or more population, provides that it shall be paid in monthly installments out of the County Treasury on the warrant of the Judge appointing the bailiff, and in the same manner as the county officials are paid.

Trusting that the foregoing may serve your purposes, I am

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

JFJJr:J

October 11, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your letter of September 28th addressed to the Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You enclose copy of letter to you from Hon. W. M. Vaughan, Probate Judge of Dallas County. He wishes to know the amount of the filing tax on a deed given by a commissioner in the partition of land between tenants in common.

In reply will say that the deed filing tax is always governed by the value of the property, or the interest in property conveyed by the deed. Where one tenant in common conveys his interest in a particularly described piece of land to another tenant in common the value of the interest conveyed is the measure of the filing tax. In other words, if A and B are tenants in common of the E½ of NW¼ of Section 10, etc., and they divide the property, and A conveys to B his interest in the SE¼ of the NW¼ and B conveys to A his interest in the NE¼ of the NW¼, it is evident that there is conveyed in each one of the deeds one-half interest in the forty acres described in the deed, and the value of this half interest is the measure of the filing tax for such deed.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

AAE/s

October 12, 1926.

Hon. W. R. Jackson, Probate Judge,
Lawrence County,
Moulton, Alabama.

Dear Sir:

You ask for a construction of Section 2658 of Code of 1923, specifically "will all county officers be required under this section of the Code to make bonds with some surety or guarantee company, and will the county be required to pay the premium on said bonds."

Section 2658, which we quote in full for convenience, is as follows:

> "After the adoption of this Code the officers and authorities authorized to fix and approve or to require additional bonds as to all county officers shall require that the bond of such county officer be made by some surety or guarantee company or companies authorized by the laws of this state to make such bond; and the premiums of such bonds shall be a charge against the county and payable out of the county treasury upon the certificate of the officer or agency requiring, fixing or approving the bond."

Our interpretation is that only those officers specifically required to make bond must do so. The section above quoted requires that bonds be made in

some authorized surety or guarantee company instead of individual bonds heretofore allowed and that the premiums charged for such bonds shall be paid by the county after being properly approved.

Yours very truly,
CHAS. H. BROWN,
Assistant Attorney General.

CHB:J

October 13, 1926.

Hon. J. C. Nation,
Probate Judge of Blount County,
Oneonta, Alabama.

Dear Sir:

You inquire if the Tax Assessor and Tax Collector of Blount County, being elected to succeed themselves and having already made bond covering the period to October 1, 1927, shall execute new bonds upon entering upon their next terms of office. Sections 3038 and 3046, Code of 1923, require that these officers respectively execute bond, in duplicate, "before entering upon the discharge of the duties of his office." If the bond to which you refer is in effect, we know of no statute requiring the filing of a "new bond" covering the same subject matter. If the existing bond is on file with the proper authorities, we are of opinion that the requirements of Article 5, Code of 1923, have been met until the expiration of same requires its renewal.

Yours very truly,
CHAS. H. BROWN,
Assistant Attorney General.

CHB:J

October 15, 1926.

Hon. Frank N. Julian,
Superintendent of Insurance,
Capitol.

Dear Sir:

You call attention to a certain practice of making loans in connection with life insurance. The practice you refer to is as follows: A person applies to a local insurance and real estate agent for a mortgage loan. The agent agrees to get the loan from a life insurance company that he represents, without charging any commission for procuring the loan. However, the agent requires the applicant to take life insurance in the company making the loan or some other company satisfactory to them, said insurance to be on the party applying for the loan or some other person acceptable to the company, and to be in an amount equal to the amount of the loan. It is stated in the agreement that said policy or policies shall be kept constantly assigned to the mortgagee (the company) **"as additional collateral"** for the indebtedness secured.

You ask an opinion as to whether or not, in this transaction, there is a violation of the anti-rebate statutes of Alabama.

Section 4605 of the Code provides that "no life insurance company or agent thereof shall make any contract of insurance or agreement as to such contract, **other than is plainly expressed in the policy issued thereon;** nor shall any such company or any officer, agent, collector, or representative thereof * * * * give or allow * * or offer to give or allow as inducement to insurance * * any **valuable consideration or inducement whatever not specified in the policy** contract of insurance," etc.

Subsequent sections fix penalties for the violation of this statute, and provide for the revocation of the certificate of authority of the company or agent so offending. It will be noted that the section with reference to life insurance companies, quoted supra, is far more comprehensive than the general provisions against rebates and discriminations to be found in section 4589.

The general purpose of this legislation has been stated by Justice McClellan of the Supreme Court in the following language:

> "The policy of our insurance laws is to require and to enforce uniformity in such transactions. They prohibit, under penalty, rebates and discriminations; and, in aid of the effectuation of this public policy, it is **inescapably** exacted that the insurance contracts shall contain the entire engagement and **any related obligations** with **respect thereto,** it being forbidden to make an insurance contract or an agreement as to such contract' that is not 'plainly expressed in the policy issued thereon' —thus manifesting an unmistakable purpose to compel the incorporation in the contract issued of **all the terms of pertinent agreement** that precede the issuance of the policy thereon."
>
> Pryor v. Gowan, 204 Ala. 259.

However, you raise a specific question which seems to be at large in this state, and a question upon which the authorities of other states do not agree.

We find in Pennsylvania a statute substantially in the language of ours. (Pa. Acts 1909, p. 406.) Joyce in his work on insurance referring to this statute says, "nor is it violative of the statutes as to rebates, etc., to require one who desires a mortgage loan from the company to take out life insurance."

> Joyce on Ins., Vol. 2, p. 2195 (Sec. 192-g.).
>
> Spangler Brewing Co. v. Phil. Life Ins. Co., 58 Pitts L. J. 313.

However, Cooley in his briefs on the Law of Insurance (Vol. VI, Page 390), referring to the same Pennsylvania Statutes, has the following to say:

> "But it is held in Pennsylvania that where a life insurance agent agrees with a person who has taken out insurance, to repay the premium if the company does not make a mortgage loan to insured within a specified time, the ratification of the contract by the company would not validate it, as it is **founded on an illegal inducement prohibited by act of May 3, 1909."**
>
> Mechling v. Phil. Life Ins. Co., 58 Pa. Super Ct., 526.

In the Washington case of **Phillips v. Fishback,** it was held that a similar statute is not violated when a licensed insurance agent engaged in negotiating loans, obtains from the applicants for loans the exclusive right to write insurance. In this case it was contended by respondents that the loan agreement was an illegal consideration or **inducement.** Said the court, "With respondent's contention we cannot agree. If the inducement and consideration flowing from appellant in such transactions constitute an inducement or favor for anything, **it is for the granting of a loan."**

In this case, reference is made to the general disfavor with which courts look upon such statutory provisions, and to the fact that a contrary conclusion would upset a universal practice of agents making loans and obtaining insurance in this manner to augment the security.

Phillips v. Fishback, (146 Pac. 181).
Joyce on Ins., Vol 2, page 2195, 32 C. J. 1194.

In a Michigan case it was held to be no violation of the statute against rebates and **inducements,** etc., for the insurance agent to buy drinks for the prospect being solicited, provided he was not **induced** to the point of intoxication. The court made the observation that such a crude and decadent method of lubricating the solicitation of insurance is perhaps to be deprecated, but that it could not be held to violate the statutes against rebates and **inducements,** etc.

In Iowa there is a statute very similar to ours, which prohibits life insurance companies and agents offering "any valuable consideration or inducement whatever not specified in the policy," etc. (Acts 23rd Gen. Ass. C. 33, Sec. 1.). The syllabus citations of the case of **Key v. Nat. Life Ins. Co.** would indicate a holding to the effect that a contract for insurance by which the company agrees to make a mortgage loan to the insured, is not repugnant to said statute. However, a careful reading of the case discloses no such holding. It was a civil suit to recover the amount of the first year's premium paid by plaintiff on a policy of insurance, because the company refused to carry out their part of a contemporary agreement to loan her $10,000.00 on her house and lot. The company set up as a defense to this suit, that the **loan agreement was an illegal inducement** and not enforceable. As we understand the case the **court did not hold that there was no illegal inducement,** but that the contract was entire and incapable of apportionment, and that upon being rejected by the company, it was rejected in **toto,** and the plaintiff was entitled to recover the amount of the premium paid. The opinion contains expressions which, though in the nature of dicts, clearly indicate that the court regarded the loan agreement as an illegal inducement, in view of the anti-rebate law.

Key v. Nat. Life Ins. Co., 78 N. W. 56 (194 Mich. 371).

I doubt if the high courts of this state would adopt without qualification either of the above rules. It is the opinion of the writer that each case must stand upon its own merit. We will not say as a matter of law that the statute is or is not violated in all instances of life insurance being required in connection with the loan transactions. It seems to the writer that there is a question of fact to be determined in each case.

If the loan is the principal transaction, and the life insurance is a bona fide incidental requirement of the company, **for the purpose of augmenting the loan security,** a requirement made of all applicants alike, without discrimination, who may apply for a loan, then I am of the opinion that the transactions do not fall within the inhibition of the statute.

However, if the company or agent calls upon a **prospect for life insurnace,** and as a sales argument **or inducement,** makes the promise that if the policy of insurance is taken, the company will make long time mortgage loans to the insured, at a low rate of interest, and without charging any commission, I am of the opinion, that this may constitute an "inducement," in fact and in law, and if "not specified in the policy contract of insurance," would be offensive to the anti-rebate statutes quoted supra.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

October 18, 1926.

Hon. John B. Weaver,
Judge of Probate,
Double Springs, Alabama.

Dear Sir:

Your letter of October 12th addressed to Hon. Harwell G. Davis, Attorney General, has been referred to me for reply. You write as follows:

> "One of the political parties in Winston County held a Primary on the second Tuesday in August, 1926, and nominated a county ticket except for the office of Tax Collector. On October 11, 1926, the Executive Committee of the party above referred to met and nominated a candidate for said Office of Tax Collector, and made certificate of same."
>
> "Under Sections 674, 675, 676 and 3957, I doubted the authority of the Committee to make the nomination as aforesaid.
>
> "Please notify me immediately if the nomination as set out above is legal, and if it is my duty to have the candidate's name for tax collector printed on the official ballot to be used in the General Election, November 2, 1926."

Your question is answered, in my opinion by section 668, Code 1923, reading as follows:

"The state executive committee in cases of state officers and the executive committee of any political subdivision of the state or other governing body as the case may be, but subject to the approval of and in accordance with the method prescribed by the state executive committee, where vacancy may occur in any nomination, either by death, resignation, revocation or otherwise, or in case of any special elections, may fill such vacancy either by action of the committee itself, or by such other method as such committee or governing body may see fit to pursue."

In the instant case a vacancy having occurred in the nomination, either by death, resignation, revocation **or otherwise,** the executive committee of the county is correct in filling such vacancy in such nomination.

I fail to see where the sections cited by you are applicable.

Yours very truly,
ROBERT G. TATE,
Assistant Attorney General.

RGT:J

October 20, 1926.

Mr. H. G. Dowling, Superintendent,
Public Schools,
Cullman, Alabama.

My dear Sir:

This acknowledges receipt of your letter of October 13th, directed to the Attorney General. You make the following inquiry:

> "When a school building has been burned and insurance upon building and equipment collected from the State Insurance Fund, would it be legal and proper for the State Department of Education to approve an application for state aid in the erection of a new building where the insurance proceeds are used as a part of local funds deposited with County Treasurer of School Funds—as a basis for the application for state aid as provided by law in Section 308 of the School Code?"

In reply your attention is called to that provision of Section 308 of the School Code to the effect that the application for said aid "shall show that **bona fide donations** of at least twice the amount for which aid is asked have already been secured." Your attention is further called to Section 318 of said School Code, which provides among other things that the County Board of Education shall certify to the State Superintendent of Education the **amount of donations** which have been paid over to the County Treasury.

I am unable to perceive how the insurance collected which covers both state money and locally subscribed monies can be regarded as bona fide donations within the contemplation of said section 308. My opinion is that this insurance may not be used as a basis upon which application may be made for state aid.

Trusting that the foregoing may serve your purposes, I am,

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

JFJJr:J

October 28, 1926.

Hon. Woolsey Finnell,
Judge of Probate,
Tuscaloosa, Alabama.

Dear Sir:

In answer to your inquiry over the phone will say that license to operate a pool or billiard table can not be issued for any place outside the corporate limits of a town or city. A town is an incorporated municipality having not less than one hundred and less than two thousand inhabitants. A city is an incorporated municipality having two thousand or more inhabitants.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

AAE/s

October 28, 1926.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

My dear Sir:

In reply to your letter of October 27th will say that Schedule No. 10, in regard to the filling stations, has reference to the license charged for the state only, but this schedule, like every other schedule in the license act, where the contrary is not specifically provided for, is also governed by Section 362 of the General Revenue Act of 1919, which provides for 50% of the State License or privilege tax to be levied for the county, in addition to the state license.

I know of no provision of law exempting said schedule 10 from the operation of said Section 362. Whatever is charged for the state under said schedule 10, there must be added 50% of that amount as a license for the county.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

AAE:J

October 30, 1926.

Mr. J. L. Draper, Clerk,
Morgan County Court,
Decatur, Alabama.

Dear Sir:

You inquire whether or not the city is liable for costs on cases from a Recorder's Court appealed to the Morgan County Court or a court of like jurisdiction, and there ordered dismissed by the city, settlement having been made with the city court.

The Case of **The City of Selma vs. Stewart,** 67 Ala. 338, holds that "Municipal corporations are not, in any event, liable for costs incurred in prosecutions for the punishment of offenders against their ordinances." Under this holding, we are of the opinion that the city could not be held liable for costs of "recording and preparing the cases for trial" in the County Court.

Yours truly,
CHARLES H. BROWN,
Assistant Attorney General.

CHB:L

November 5, 1926.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

This acknowledge receipt of your letter of November 1st. You write as follows:

> "We have a deed offered for record, where there is nominal consideration shown (no actual consideration) and this deed is made by administrator or executor, in compliance with will of father of grantee, which will provides that deed shall be made by executor as each heir becomes of age, and we desire to know whether we collect deed privilege tax on the full value of the property or the nominal sum of fifty cents."

In reply will say that a filing tax is based on the value of the property conveyed by the deed. He had doubtless conveyed the property to the executor with instructions to the executor to convey it by deed to each of the heirs as he becomes of age.

Under such facts it is my opinion that the filing tax for the deed is measured by the value of the property conveyed.

Yours very truly,
A. A. EVANS,
Special Assistant Attorney General.

AAE:L

November 17, 1926.

Hon. E. J. Garrison, Judge of Probate,
Ashland, Alabama.

Dear Sir:

Your letter of November 12th, addressed to Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "Will you please give me your ruling as to the penalty which must be collected in case of delinquency in taking out (1) occupation licenses, and (2) automobile tags.

"In case a man is not cited by the license inspector—even though he is delinquent—is a penalty collectible?

"Also is a penalty collectible, when applicant is delinquent—as to tags? And is 15% collectible when the inspectors cite only, and do not institute legal proceedings.

"Your reply at the very earliest date is desired."

In reply will say that to entitle a license inspector to the fifteen per cent provided by section 25-c of House Bill No. 321 (Acts 1923, page 249), the delinquent must have been cited as provided for by said section and the delinquency must have been reported to the judge of probate.

In all cases where the fifteen per cent penalty is collected by the judge of probate for the license inspector the sum of $1.50 should be collected for the person who served the citation. This person may be the license inspector himself or his deputy.

In all cases where the delinquent has been cited and the Probate Judge has been notified of the delinquency the fifteen per cent penalty should be collected as well as the $1.50 for serving citation.

The same rule applies to both occupation license and to motor vehicle license. Said Section 25-c is not very clearly written, and, so, the whole section has to be carefully studied to get the legislative intent. Most all of the Section clearly shows that it was intended to apply to all licenses issued by the judge of probate, while in three places it would appear to apply to license for motor vehicles only. It is our opinion that when the whole section is examined, it clearly appears that it was the legislative intent that all licenses issued by the judge of probate are included.

Respectfully,
A. A. EVANS,
Special Assistant Attorney General.

November 20, 1926.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

Your letter of November 16th, 1926, addressed to Hon. Harwell G. Davis, has been referred by him to me for reply. You write as follows:

"We have a paper offered for record which is an extension agreement, extending a mortgage made by one of the parties to the other on November 8th, 1922, which said mortgage is of record in this office, and this extension agreement extends said debt over a period of nine years payable $1,000.00 each year, together with interest each year, and we desire to know if there is any privilege tax, either mortgage or deed, on this instrument."

In reply will refer you to subdivision (f) of Section 4½, Rev. Act 1923 (Acts 1923, page 158). The word "extent" in this subdivision should be read "extended." It seems clear to me that the tax must be paid on the contract of extension, just as though it were a New Mortgage.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

AAE:L

November 20, 1926.

Hon. W. W. Brandon,
Governor of Alabama,
Capitol.

Dear Sir:

Your Excellency desires advice from this office as to whether or not you have authority to reappoint a jury commissioner whose term ends the first Monday after the second Tuesday in January next.

Section 8580 of the code provides that the jury commissioners shall be appointed by the Governor and shall hold office **"until"** the **first Monday after the second Tuesday in January,** etc. Upon the expiration of each term the Governor shall appoint successors, "Who shall hold office for three years, **from the expiration of the term of office of their respective** predecessors."

It has been held by the Supreme Court of this state that when the word "till" or "until" is employed to mark the end of a period of time, it must be construed as prima facie **exclusive of the terminus ad quem.** Applying this rule in construing the act of 1909 defining the term of a Jury Commissioner, it was held that said term expired at midnight Sunday, and did not extend into the "first Monday after the second Tuesday in January."

Oberhous v. State ex releto, 173 Ala. 497.

The question then presents itself, as to whether or not the term of office of your Excellency extends beyond the point of time of the falling in of the term of said jury commissioner, which, as aforesaid, is midnight Sunday before the first Monday after the second Tuesday in January.

Section 116 of the constitution of this state provides that the Governor shall hold for a term of four years **"from the first Monday** after the second Tuesday in January," next succeeding his election, and until his successor shall be elected and qualified.

The Supreme Court, with this section of the constitution before them, has held that the term of the Governor does not commence on Monday, the day fixed by statute (Sec. 2566) for his installation, but that it commences on Tuesday, and that the intent of the constitution to this effect is "too plain to permit of alteration by legislative enactment or popular usage."

Case cited supra (173 Ala. 496).

It therefore follows that since the term of office of the jury commissioner falls in at midnight Sunday, and your Excellency's term de jure does not expire until midnight Monday, the expiration of the jury commissioner's term

of office occurs during your administration, and in my opinion you have authority to appoint a successor.

I might add that the above case, which is directly in point, further holds in effect, that you will not have to wait until Monday, January 17th, to make the appointment, but that a prospective appointment may be made at a convenient season before the actual expiration.

Respectfully yours,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

JFJ:L

November 24, 1926.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

Your letter of November 10th, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. You write as follows:

> "We have presented to us for record a release of certain lands from a mortgage, there being no consideration for the release, simply releasing property to be sold and proceeds to be applied on mortgage that is a PRIOR lien to the lien being released, and the grantor of the release still holding other lands in his mortgage as his security."

In reply will say, that you are evidently, from your own statement, mistaken when you say there was no consideration for the deed of release. There can be no such thing as a release of title to real estate in the sense of merely turning it loose. The release is, in effect, a deed conveying whatever title or interest the Mortgagee had by his Mortgage back to the Mortgagor and this, for the purposes of filing for record must be regarded as having some value, or the instrument would not be entitled to record since it would not be a conveyance of property. The filing tax is measured by the value of the interest comveyed and can never be less than fifty cents, as that is the minimum fee for filing for record any unconditional conveyance of property, except as the statute has been modified by the decision of the Supreme Court in re Harrison vs. Hamlin, and that is only in filing for record the written Conveyance of a chattel Mortgage and the written Conveyance of a Conditional Sale Contract of personal property. The case mentioned by you does not fall under either of these modifications.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

AAE:L

November 26, 1926.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

Dear Sir:

Your letter of November 20th addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply. In reply will say that when any person owns and uses a motor vehicle on the public roads of this state at any time on October 1st or afterwards during the license year he must take out a license for such motor vehicle for such year, if used before April 1st of such license year, and for half year if used after April 1st of such license year. The license year for Motor vehicles extends from October 1st of one Calendar year to September 30th of the next Calendar year. If between September 30th and November 15th a Motor vehicle is used on the public highway the liability for the license for such license year is fixed, only the enforceable date of payment is deferred by the statute till November 15th; if not paid by such user before November 15th such person can then be required to take out such license although he may have sold such Motor vehicle before November 15th. If he refuses to take out such license after having been cited by the license inspector, he may then be prosecuted as provided by the statute or sued as provided by section 27 of House Bill 312, Acts 1923, page 295.

The person to whom such Motor vehicle is sold is not required to take out license until he uses it.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

AAE:L

November 30, 1926.

Mr. P. B. Jarman,
Assistant Examiner of Accounts,
Capitol.

Dear Sir:

I have for reply your letter of November 19th directed to Hon. Harwell G. Davis, Attorney General.

You state that a clerk of the Circuit Court is also ex-officio clerk of the county court, and is under two bonds, one as clerk of the circuit court, and the other as clerk of the county court. You ask "if in the event of a defalcation in county court collections greater than the amount of the County Court bond," the bond of the circuit court clerk will cover the balance of the shortage.

It is a general principle of the law of suretyship that the sureties are liable for the malfeasance or negligence of the principal in the performance of any acts done virtute officii.

It is furthermore well established that when an officer holds two separate

and distinct offices, the bond given for the faithful performance of the duties of one office does not cover malfeasance in the other office.

29 Cyc. 1454 (Cases cited).

It is a no less well recognized principle that when a public officer who has given bond is required by law to give additional bond to secure the performance of some special duty, the general bond is not liable for defaults in the matter of the special duty, and the special bond is not liable for acts in line of the general duties of the officer.

Stearns on Suretyship (3rd Ed.), p. 257.

When a county treasurer is made custodian of school funds, and is required to make a special bond as such, it has been held that the **"two bonds are not cumulative,"** and the sureties on the general bond are not liable for defaults in the school funds.

Brandt on Suretyship (Vol. 2, 3rd Ed.), Sec. 650, 651.
State v. Young, 23 Minn. 551.
County v. Tower, 28 Minn. 45.

The clerks of circuit court are by Section 3803 of the Code of Alabama made "ex-officio clerks of the county courts of their respective counties." However, Section 3805 of the Code requires him to give bond for the faithful discharge of "the duties of clerk of the county court."

It is the opinion of the writer that the bond of the circuit clerk will not cover defalcations or malfeasance in the performance of the duties of county clerk, et vice versa.

However, your letter indicates that there was a commingling or confusion of the funds collected as clerk of the circuit court with those collected as clerk of the county court, and perhaps of both of these funds with the personal account of the clerk. It is impossible from the facts given, to judicially ascertain the time or times, or the amount of the defalcation, or several defalcations, as the case may be. I am of the opinion, that after the discovery of the shortage, county court funds could not be legally used to cover the deficiencies in the account of the circuit clerk. It would perhaps require a bill in equity against the clerk and the sureties on the two bonds, to compel an accounting, and for discovery, in order to ascertain with any degree of certainty the particular time of any particular conversion, misappropriation or malfeasance, and thereby determine the respective rights and liabilities of said sureties.

Self v. Blount County, 124 Ala. 191.

Trusting that the foregoing may serve your purposes, I am

Yours very truly,
J. FRED JOHNSON, JR.,
Assistant Attorney General.

JFJJr:J

December 3, 1926.

Judge R. G. Jones,
Clerk of Circuit Court,
Linden, Alabama.

Dear Sir:

Your inquiry addressed to Hon. Harwell G. Davis has been referred to the writer for reply.

You ask if the fees of officers of the court are payable out of the general fund or fine and forfeiture fund of the county, in cases of convictions of disabled men or women who are hired out but for whose labor the county received nothing.

In the opinion of the writer the costs in such cases are not payable out of **either fund.** For the conditions precedent to charging the fine and forfeiture fund can not be met.

Report Attorney General 1920-22, page 353, authorities there cited.

The county is liable for costs and fees only to the extent and in the manner provided by law.

It appears that the officers, in such instances, must lose their fees, the principle that they take their officers "cum onere" must be applied.

Torbert vs. Hale County, 131 Alabama 143.

Hoping the above expression furnishes the desired information, I am

Yours truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:L

December 7, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your inquiry addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply.

Your inquire whether or not the claims of the Farm Demonstration Agent and the clerk of the Jury Commission are preferred claims.

The writer finds no provision of statute making it obligatory upon a county to employ a Farm Demonstration Agent. Therefore, when one is employed it becomes a **voluntary** obligation of such county.

Unless the salary of such employee is especially mentioned in Section 231 of the Code, which section enumerates the claims which are preferred, or unless the statutes require the county to employ such persons, the claim for this salary is **not** a preferred claim of **either class.**

Brown vs. Gay-Padgett Hdw. Co., 188 Ala. 423.

In the opinion of the writer the claim of the clerk of jury commission is a preferred claim. The following observations are indicative of this con-

clusion, viz: It might well be said that such claim is a part of "Court expenses," which are preferred claims under Section 231, Code 1923; furthermore Sections 8587 and 8588, Code of 1923, provides that this claim shall be paid out of County treasury upon order of the commission or the president thereof. These Sections indicate that the legislature did not intend the postponement of the payment of this claim until it was audited and allowed by the court of County Commissioners.

If same is considered as court expenses, the claim is of preference second in order only to those previously enumerated in Section 231, Code 1923. The writer is of the opinion that the claim is an expense of the courts.

Hoping the foregoing expression furnishes the desired information.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:L

December 7, 1926.

Mr. George Darwin,
Tax Assessor,
Huntsville, Alabama.

Dear Sir:

Your request of the Hon. Chas. E. McCall to get ruling from Attorney General's office upon Section 3023 of the Code, 1923, was duly refererd by him to this office.

In reply will say that Section 3023, in my opinion, is without any force or effect for several reasons:

1st. Before the adoption of the Code 1923, Section 2062 of the Code 1907 was repealed by implication as held in an opinion from this office written by the Hon. Jas. J. Mayfield, Assistant Attorney General, on February 21st, 1922 (Report Attorney General, 1920-22, page 377), a copy of which I am herewith enclosing to you, and which, in my opinion, is a correct interpretation of the law at that time. Hence, unless the adoption of the Code of 1923 gives vitality to this section, permitting Courts of County Commissioners to remit the taxes assessed for county purposes upon "factories for the spinning of thread and yarns and the knitting and weaving of cloth and other fabrics of cotton and wool in this state," such Section has not, in fact, ever been adopted by the legislature and is, therefore, without validity. By the law as it was prior to the adoption of the Code of 1923 "All real and personal property of * * Cotton Mills," * * , were taxable both for state and county (Revenue Act 1919, Section 5; Acts 1919, page 287); opinion above referred to by Hon. Jas. J. Mayfield, Assistant Attorney General. Did the Act adopting the Code, 1923, give vitality to said Section 3023? This act contains the following provision:

"No Statute applying to the revenue laws of the state, or to taxation * * * * * , or relating to such subjects shall be repealed or affected in any manner by the adoption of this Code, or by the failure to incorporate such Statutes as part thereof."

It seems to us very clear that if the statutes, prior to the adoption of the Code, required that such Cotton Mills be taxed for both state and county purposes, then to construe said Section 3023 as validly adopted as part of such Code, would nullify that part of the adopting Act above quoted. Said Section certainly does affect the statutes applying to the revenue laws of the state or to taxation, by authorizing the Court of County Commissioners to exempt from county taxation such cotton mills, an authority which such court did not previously have.

2nd. If Section 3023 of the Code of 1923 was validly adopted as part of the Code 1923, or if Section 2062 of the Code 1907 was still alive, then, in my opinion, these Sections were repealed by Section 2 of the Revenue Act, 1923, Acts 1923, page 153 et seq. This act was approved August 22nd, 1923, after the Code was adopted and, necessarily, had the effect of repealing any part of the Code in conflict therewith. Said Section 2 was placed by the Code Commissioner in the Code as Section 3022. This is not the section that was adopted in the Code. The Section in the Code, when adopted, began as follows:

"The following property and persons shall be exempt from **ad valorem** taxation." This beginning of Section 3022 as in the Code, when the Code was adopted, included, if there were nothing else than the wording of the Code to guide us, not only the exemptions mentioned in said Section, but those mentioned in the following sections of Article 2, chapter 58, one of, which is said Section 2023 of said Code. After the Act adopting the Code, the legislature passed an Act in which the tax exemption law was rewritten in Section 2 of said Act—Acts 1923, page 153 et seq. This section of the revenue Act, 1923, begins as follows:

"The following property and persons shall be exempt from **ad valorem** taxation and **none other**"; and in the exemptions there named the exemptions provided for by said Section 3023 of the Code are omitted. The placing of Section 2 of this Act in the Code of 1923 as Section 3022 of said Code and leaving in the Code other exemptions now found in said article 2 of chapter 58, was in our opinion, a misinterpretation of Section 4 of the Act adopting the Code of 1923. When Section 2 of said Act, passed subsequent to the adoption of the Code, was placed in the Code by the Code Commissioner, it should have taken the place of all of article 2 of chapter 58 of said Code, as adopted, and not the place of section 3022 only, as was done by the Code Commissioner.

In our opinion, Section 3023, not being the law prior to the adoption of the Code, and having the effect of increasing the exemptions from taxation that might be allowed by the Court of County Commissioners, it would, if valid, affect Section 5 of the general revenue Act 1919; it was, therefore, eliminated from the Code by the Act adopting the Code. Again even though said Section 3023 of the Code was validly adopted, it was necessarily repealed by said Section 2 of the revenue Act, 1923, passed after the Code was adopted.

In addition to the foregoing, which applies to all **ad valorem** county taxes, there are other special reasons why said Section 3023 could not apply to County School and district taxes. In that case the constitution gives to the several counties of the state, under certain conditions, the authority to levy such taxes on the taxable property in such counties and districts; not

upon a part of it. The taxable property is designated in Section 5 of the general revenue Act 1919, and includes "all real and personal property of Cotton Mills" * * *. When any county or district has complied with the requirements for levying such **taxes,** there is no authority given by the constitution to levy on less than all of such property, and no authority to remit any part when levied upon.

Respectfully,
A. A. EVANS,
Assistant Attorney General.

AAE:L

December 8, 1926.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

You request me to advise whether or not the Act approved September 29, 1923, (General Acts 1923, page 685) relieves the Circuit Clerk of Jefferson County from the duty of issuing execution as required by Section 7805 of the Civil Code of Alabama of 1923.

In my opinion, this act is unconstitutional, and does not serve to relieve said clerk of the duty required by said section of the Code.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

HGD:J

Dec. 8, 1926.

Hon. W. J. Merrill,
County Treasurer,
Andalusia, Alabama.

Dear Sir:

Section 6766 of the Code of Alabama of 1923, requires the Semi-Annual Report published in a newspaper to be an **itemized report** showing the receipts and expenditures of money for the County, specifying particularly the purposes for which expended and sources from which received.

The purpose of this statute is to place within the hands of every citizen of your County such a detailed financial report that he will be able from that report to ascertain from what source all funds received and to whom and for what purposes the money was paid.

In my opinion it is advisable to go to both the expense and trouble of complying with the spirit of this Section to the fullest degree.

Yours very truly,
HARWELL G. DAVIS,
Attorney General.

HGD:F

December 9, 1926.

Hon. Ralph A. Clark,
Circuit Clerk,
Andalusia, Alabama.

Dear Sir:

Your inquiry of date November 30th addressed to Hon. Harwell G. Davis has been referred to the writer for reply.

You inquire whether or not you should accept witness certificates, properly certified, in payment of fines. You mention that for a number of years this was the practice in your county by reason of the fact there was enacted a local act providing authority for such payments.

The question presented by your inquiry, is whether or not the Act of December 11th, 1886, providing that witness certificates should be accepted in payment of fines, was repealed by Section 4038, Code 1923, which provides that all fines shall be paid in money.

A later general act does not repeal a prior local act unless it was plainly the intention of the legislature so to do. It is necessary that this intention to repeal be expressed by a repealing clause or by necessary implication. It will be noted that Section 4038, Code 1923, contains no repealing clause.

Pearce vs. Bank of Mobile, 33 Ala. 693.

Then the question arises as to whether or not there is a field of operation for both acts.

State ex rel Tyson vs. Houghton, 142 Ala. 96.
Bd. of Rev. vs. Johnson, 200 Ala. 533.

There can be no doubt but that there is a field of operation for both acts. The Covington County Act of 1896 may apply to that county without conflict with the provisions of the Code Section, 4038.

Maxwell vs. State, 89 Ala. 150.

The writer notes that the provision that fines be paid in money was inserted for the first time in the Section in the Code of 1923. This, however, is hardly pertinent to the question to be decided.

Having decided that there is nothing of necessary implication expressing the clear intention of the legislature to repeal the Act of 1886, and the Code Section containing no clause of express repeal, it is the opinion of the writer that the Act of 1886 is still applicable to Covington County and that the certificates timely presented should be accepted in payment or part payment of fines. The writer is influenced to this conclusion by the authorities hereinbefore cited and the usual rules of construction of the repeal vel non of local Acts.

Another view which may be taken of the question is that the provision that all fines be paid in money, is found in the same clause with the limiting phrase "unless otherwise expressly provided." The Section might then be read: All fines and forfeitures shall be paid in money, **unless otherwise**

expressly provided. So construed the Code Section rather indicates an intention of the legislature not to disturb or repeal other provisions on the subject.

Section 4038, Code 1923.

Hoping the above expression will furnish you the desired information, I am

Yours truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:l

Dec. 10, 1926.

Hon. M. R. Sowell,
Circuit Clerk,
Monroeville, Alabama.

Dear Sir:

Your inquiry addressed to the Hon. Harwell G. Davis, was referred to the writer for reply.

You ask a construction of Section 3770 of the Code of 1923, which section has reference to witness fees in instances where the witness was subpoenaed in more than one case.

The writer construes the above mentioned section to provide that a witness may claim fees in more than one case, providing he is detained or required to attend the other case after the one he elected to prove his attendance in, has been disposed of. The same may be said and same reasoning applied if he is subpoenaed in more than two cases. In each instance, however, after having proved attendance in one case should he be required to attend, he must make an election from the remaining cases to which he will prove his attendance.

If the case in which the witness elects to claim his fees is not disposed of prior to the other cases, then he would not be entitled to claim fees in the other cases, for the reason that he was not detained or required to attend the other cases. The same reasoning may be applied where there are more than two cases.

In the instance you speak of in your letter the witness having failed to make an election before the two cases were disposed of, he would not be entitled to his per diem except in one case.

Hoping the foregoing expression is the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:f

December 10, 1926.

Mrs. T. F. Adams,
Extension Secretary,
Child Welfare Dept.

Dear Mrs. Adams:

Your inquiry of date December 7th addressed to Hon. Harwell G. Davis has been referred to the writer for reply.

You ask if a proceeding under the Non-support Act, Section 4480, Code 1923, may be commenced in Justice Court by affidavit made returnable to the Juvenile Court, or to a court of Juvenile jurisdiction, of the county.

Section 4484 of Code 1923 provides that the Probate Court, Juvenile Court or Court of Domestic Relations, as the case may be, shall have and exercise **exclusive and original jurisdiction** of all matters arising under this chapter.

Original Jurisdiction has been defined as the jurisdiction to first hear or take cognizance of an offense, or cause of action. As the jurisdiction in which the proceedings has its inception or origin, or is commenced.

Words & Phrases (Second Series), Vol. 3, p. 798.

A conference of original jurisdiction upon a court by constitutional or statutory provision does not, without more, amount to a grant of exclusive jurisdiction. Nor would use of such terms operate to deprive or preclude other courts of concurrent jurisdiction.

However, the use of the words "exclusive and original" confers, upon such court or courts mentioned, the only or sole jurisdiction of the subject matter. Precluding all other courts, taking cognizance of the offense, or the commencement of the proceedings therein. The cause must then be begun in the court designated by Statute.

Burks vs. Walker, 109 Pacific 544.

It follows that it is the writer's opinion that proceedings under the Non-Support Act, Section 4480, Code 1923, **must** be commenced in one of the courts designated by statute, exclusively. The prosecution may not be commenced in a justice of the peace court.

Hoping the foregoing expression furnishes the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:l

December 11, 1926.

Hon. G. L. Malone,
Judge of Probate,
Fort Payne, Alabama.

Dear Sir:

Your letter of December 2nd, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred by him to me for reply.

You wish to know the law as to filling stations outside of the incorporate limits of a municipality.

In reply will say that it is perfectly plain that schedule 10 of license law, as compiled by Allen, requires the payment of a license for filling stations within the corporate limits of any municipality or within the police jurisdiction thereof. Section 1954 of the Code of 1923 defines police jurisdiction of municipalities as follows:

"The police jurisdiction in cities having six thousand or more inhabitants shall cover all adjoining territory within three miles of the corporate limits, and in cities of less than six thousand inhabitants, and in towns, such police jurisdiction shall extend also to the adjoining territory within a mile and half of the corporate limits of such city or town."

When said schedule 10 and said Section 1954 are considered together, there can be no doubt that persons operating a filling station within three miles of the corporate limits of a city of six thousand or more inhabitants or within a mile and a half of the corporate limits of a city or town of less than six thousand inhabitants have to pay the license as prescribed by said schedule ten.

Yours very truly,
A. A. EVANS,
Assistant Attorney General.

December 13, 1926.

Hon. G. H. Howard,
Wetumpka, Alabama.

Dear Sir:

Your inquiry addressed to the Hon. Harwell G. Davis has been referred to the writer for reply.

You ask whether or not the county may pay for ice to be used in the various offices or the court house, in the court room during Court Sessions and at the Alms house.

In the opinion of the writer such expenditures **made with due discretion**, would be proper.

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:L

Dec. 18, 1926.

Hon. M. B. Curry,
County Solicitor,
Carrolton, Alabama.

Dear Sir:

This is a reply to your inquiry submitted to this office on a recent date.

You ask:

1. Under Section 6776, Code of 1923, authority is given Courts of County Commissioners to "borrow money in anticipation of the collection of taxes **for the year in which such loans are made.**" Would a loan made in December,

1926, have to be paid from taxes collected during the remainder of that year, that is taxes collected before January 1st, 1927, or does the clause, "for the year in which such loan is made" have reference to the tax year and such loan be payable from taxes which become due and payable on October 1st, 1927?

2. Under Section 6779, further referring to warrants issued under authority of Section 6776, it is provided that such warrants shall be payable on or before **December 15th of the current year.** Is this section to be construed that no loan can be made under the provisions of Section 6776 until after the first day of January of the year in which said loan is to be paid?

3. Under Section 6782 of the Code of 1923, it is provided that "the Court of County Commissioners, Board of Revenue, or other governing body of any county in this state, which county has **"outstanding indebtedness"** evidenced by valid warrants, may settle, adjust, or refund said indebtedness by the issuance of warrants of said county in an amount not greater than the amount of the warrants to be settled thereby." Is it the intention of this section to include in the term "outstanding indebtedness," warrants issued under the authority of Section 6776 above referred to?

4. Is it the intention of Section 6782 to authorize the Commissioners Court to issue new warrants at this time, in settlement of warrants issued the preceding year under authority of Section 6776?

5. Section 239, et seq of the Code of 1923, also confers authority on Courts of County Commissioners to borrow money in anticipation of the collection of taxes. Does Section 6776 repeal Section 239 or was it merely intended as an optional method by which Courts of County Commissioners might borrow money?

6. May a loan made under either of the two sections mentioned above be retired from the proceeds of a new loan made the following year?

7. The County now has outstanding warrants in the sum of $45,000. Can these be refunded under Sections 6782 et seq of the Code?

Referring to your first inquiry, it is the opinion of the writer that the legislature contemplated that the county borrow this money during a calendar year. For instance, if the statute were construed to mean tax year, from Oct. 1st to Oct. 1st, the money borrowed after Dec. 15th could not be paid back on Dec. 15th of the tax year in which it was borrowed for the reason that there would be no **Dec. 15th of that year.**

Referring to your second inquiry: Apparently the legislature contemplated that the money be borrowed after Jan. 1st of the year in which it is to be paid. Such money must be paid back by Dec. 15th of the calendar year out of taxes collected during the current tax year.

As to the third question: It is the opinion of the writer that Section 6782 does not authorize the settlement, by the issue of new warrants that indebtedness or those warrants authorized by Section 6776; for the following reason, viz:

1st. Section 6779 provides that the warrants must be payable on Dec. 15th of the year in which the money was borrowed.

2nd. Section 6781 considered in pari materia with the preceding sections of the article indicates that the loan or warrants may not be renewed. The effect of such settlement as is contemplated by Section 6782 would be to

renew this indebtedness, unless there could be shown to be some new consideration and additional consideration for the warrants issued under Section 6782.

3rd. Section 6778 provides that a certain part of or a **sufficient** amount of the taxes **of the current year,** shall be set aside to **retire** the warrants issued during that year under authority of Section 6776.

4th. All the above reasons appear to the writer to be conclusive of the fact that the legislature intended that this money be **paid back,** the warrants retired and the obligation wiped out by Dec. 15th of the calendar year in which the money was borrowed out of the taxes collected during the current tax year in which the money was borrowed.

This also disposes of your 4th and 7th inquiries.

So long as there is a field of operation for both Sections 239 and 6776, said Section 239 is not repealed.

As to your sixth question, the reasoning hereinbefore used may be applied. The warrants issued under either Section may **not** be **renewed.**

As to whether or not the issue of new warrants is a renewal depends upon the facts in the particular instance.

Report 1918-20 at page 363.

A careful consideration of the above mentioned opinion of the present Attorney General will be of value to you in determining the character of the issue of warrants you refer to in inquiry 6th.

Hoping the above expression will furnish the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEK:F

Dec. 22, 1926.

Hon. I. T. Quinn,
Commissioner of Game and Fisheries,
Montgomery, Alabama.

Dear Sir:

You inquire in the case of whether, "A game warden making an arrest for an alleged violation of the game laws in which a conviction results, is the court authorized under the statute to add to the costs, witness fees and cost for carrying defendant before the magistrate and such other fees as are allowed constables in misdemeanor cases?"

Section 4209, Code of 1923, provides that game wardens, making an arrest for the violation of the game law, are entitled to the same fees, in cases where a conviction is obtained, as constables in misdemeanor cases. Section 3756, Code of 1923, fixes the fees to which constables are entitled. Where game

wardens perform services set forth in Section 3756, in connection with violations of the game laws, they are entitled to the fees therein provided. Section 3757, Code of 1923, provides that these fees must be taxed as costs by the court or justice and collected like other costs.

Yours truly,
CHARLES H. BROWN,
Assistant Attorney General.

CHB:F

Dec. 28, 1926.

Hon. J. P. Stiles,
Probate Judge,
Birmingham, Alabama.

Dear Sir:

Your letter of December 15, 1926, addressed to Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply. Your inquiry is as follows:

Should warehouses, not storing cotton, who take out a license under Schedule 115 of the act approved September 15, 1919 (Acts 1919, page 436) be required to make bonds, under section 6 of article 34 of the act approved September 27, 1923 (Acts 1923, page 491)?

Warehouses are defined by section 1 of the Act of 1923 as follows:

"All buildings, structures or other protected enclosures used for the storage of cotton **or other articles of value,** for compensation, are hereby declared to be public warehouses."

Section 2 of said Act requires the procuring of a license as a public warehouseman for the storage of cotton or other articles of value for compensation.

Section 6 requires the person receiving such license to file a bond.

I am of the opinion that a public warehouse, storing either cotton, or other articles of value for compensation, must file a bond.

Very truly yours,
ROBERT G. TATE,
Assistant Attorney General.

RCT:F

December 30, 1926.

Hon. J. I. McClure,
Judge of Probate,
Florence, Alabama.

Dear Sir:

Your letter addressed to the Hon. Harwell G. Davis, Attorney General, has been referred to the writer for reply.

You ask whether or not the following advertisement of a sale is within the contemplation of the section of the Code requiring a license tax for holding same:

"Shop of Culture. Going out of business—Sale being Thursday, December 2nd, at 9 A. M. Join the crowds that will share in this Great Event. This store which has served the public for quite a number of years and served it well, is going to Quit Business. Henceforth Kreisman Brothers, the owners of this business, will confine our operations to our store at 220 North Court Street where we expect to continue to serve the public for many years to come. But this store must close and every item in it must be sold—every suit, every hat, every overcoat, every pair of shoes, in fact everything must go."

In the opinion of the writer this is such a sale as is contemplated by Schedule 51 of Section 303, page 179, Revenue Code of 1923. I direct your attention to that portion of the schedule which requires that before any person, firm or corporation shall sell or be engaged in the business of selling goods, wares or merchandise, such sale being advertised as a closing out sale, shall pay to the judge of probate as a license or privilege of selling such goods the sum of $100.00.

Hoping the above expression furnishes the desired information, I am

Yours very truly,
THOMAS E. KNIGHT, JR.,
Assistant Attorney General.

TEKJr:J

Jan. 20, 1927.

Hon. G. C. Grantham,
Circuit Court Clerk,
Geneva, Alabama.

Dear Sir:

You inquire whether or not the convict department can be required to pay the costs for the first trial of a case which has been reversed on an appeal from the first conviction, but affirmed on appeal from a subsequent conviction for the same offense.

"The law of costs must be deemed and held a penal law and no fee must be taken but in cases expressly provided by law," Section 3734, "and must be strictly construed." Deat and Magruder vs. State, 42 Ala. 514. "The recovery and payment of costs in criminal cases are so **entirely dependent upon statutory regulations, that it is indispensable for every claimant to be able to point to the statute which enables him to receive what he claims.** Although a prisoner is entitled to compulsory process, there is no liability on the part of the county, in the absence of express enactment, for either witness fees or officers costs; the witness must attend at his own expense, because of the duty he owes the community the officer must execute process at his own cost, for he takes his office cum onere." Commonwealth vs. Bucciere, 153 Pa. St. 570. "Where judgment is reversed and the cause remanded, no statute existing which authorized or required costs of this character to be paid by the state or county, costs incurred upon appeal could not be taxed against the county." State vs. Bainsbarger, 74 Iowa 539.

In view of the above quoted statute and authorities and in the absence of any statute on the question asked it is our opinion that the state can not be required to pay the costs involved in the first appeal and reversal.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

CCMcC:RF
Copy: Convict Department

Rayburn: RF
Jan. 21, 1927

Hon. G. H. Howard,
Probate Judge of Elmore County,
Wetumpka, Alabama.

Dear Sir:

In your letter of the 18th instant, you have asked for an opinion on the following question:

Whether or not the county may legally pay office rent for the county solicitor where there is no proper office room in the courthouse for him. Also, whether or not the county may pay office rent for the circuit judge and the circuit solicitor where there is no suitable space for them in the courthouse and where they are residents of such county.

It has long been an established principle of law that public funds may not be lawfully used unless there be some express authority for such expenditure, or such authority arises by necessary implication from the provisions of the law.

Bice, County Treasurer, vs. Foshee, 97 So. 764.
Walker vs. Bridgeforth, County Treasurer, 9 Ala. App. 257.

I find no express authority of law which would permit the county to make the expenditure inquired of by you, and I do not think that such authority can be said to arise by necessary implication.

If at any time I can serve you, I shall be glad to do so.

Yours very truly,
CHARLIE C. McCALL.
Attorney General.

Note: See General Acts, 1927.

Haynes:ML
Jan. 21, 1927.

Hon. W. B. Allgood,
State Treasurer,
Capitol.

Dear Sir:

In answer to your request of January 19, 1927, as to the authority of your chief clerk, W. W. Brooks, to sign drafts drawn against funds deposited in the First National Bank of Mobile, for the credit of the State Treasurer, we beg leave to state this office has previously rendered an opinion on the precise question here raised, and we concur in that opinion.

I refer to the opinion of the Attorney General Jan. 23, 1919, found in the Biennial Report of the Attorney General of Alabama October 1, 1918, to September 30, 1920, page 75, which is in full as follows:

"Your inquiry of January 22nd as to whether the different state depositories should honor checks and other documents signed in your name by your chief clerk, received.

"In reply, I will say that I am of the opinion that any State depository will be authorized to honor any such checks or other documents which your chief clerk may sign for you under authority from you. In order that the depositories be advised of the authority of your chief clerk, I suggest that you furnish them with your signature as written by your chief clerk, and advise them that it is so written and that they are authorized to honor it as your signature."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

McCall:RF
Jan. 21, 1927.

Hon. Woolsey Finnell,
Highway Department,
Capitol.

Dear Sir:

You request an opinion as to the constitutionality of an Act approved January 20, 1927, "to create the office of Alabama Highway Director in Alabama, to provide for his appointment, to fix his salary, to define his term of office, and to prescribe his powers and duties."

The effect of said Act is to combine the offices of President of the State Highway Commission and State Highway Engineer, the powers, duties and functions of each to be performed by the Alabama Highway Director which latter office is created by the Act.

The Legislature, without doubt, as a general proposition has the right to abolish an office created by it. The State Highway Commission as constituted before the passage of this Act was not a constitutional body above and beyond the power of the Legislature to change.

Bouchelle et al vs. State Highway Commission, et al, 211 Ala. 474.

Section 3 of the Act approved January 20, 1927, is as follows:

"The salary of the Alabama Highway Director in Alabama shall be fixed at a sum to be prescribed by the Governor, but not to exceed the salaries now paid the President of the State Highway Commission and the State Highway Engineer."

It is my opinion that this section of the Act has for its purpose fixing the maximum salary to be paid the Alabama Highway Director and that the expression "salary" means "combined salaries," and the expression "now paid" means "now possible of payment by law." The salary of the President of the State Highway Commission is fixed at $6,000.00 per annum, and the

maximum salary of the State Highway Engineer is fixed at $6,000.00 per annum. Under my construction of section 3 of said Act, therefore, the maximum salary which the Alabama Highway Director may draw is $12,000.00 per annum, though the Governor may prescribe a lower salary.

My opinion is that the Act is constitutional.

Trusting that this answers your inquiry, I am

Respectfully yours,
CHARLIE C. McCALL,
Attorney General.

Haynes:J
January 25, 1927.

Hon. Oliver Miles,
Clerk, Board of Revenue,
Columbiana, Alabama.

Dear Sir:

Your favor of the 22nd of January, 1927, requesting an opinion of this office as to the authority of the President of the Board of Revenue of Shelby County to act as purchasing agent for the Board, has been received.

The Board of Revenue of Shelby County was created by an Act of the Legislature under section 125 of the Constitution of 1901.

Local Acts 1911, p. 154.

The duties and powers of the President of the Board of Revenue as established by this Act are set out in Section 7 of said Act, which is as follows:

> "The president of the board of revenue shall be its presiding officer, shall sign the minutes of the proceedings of the board and shall have the same power and authority as other members in passing upon all questions and shall sign all warrants drawn on the county treasury and all orders for the payment or disbursement of money, or funds of the county and sign all contracts entered into by 'The Board of Revenue' of Shelby County. It shall be his duty to prepare business and obtain information for the sessions of the board of revenue, to see that all orders thereof are properly executed. He shall exercise all its powers and perform all the duties required of the probate judge as to matters coming before the courts of county commissioners."

In the Act creating this Board, the general powers of the Board are referred to the general powers conferred upon the court of county commissioners of the various counties.

Section 5 of Act Creating Court, Local Acts 1911, p. 154.

So to ascertain the general powers of the board we are compelled to look in the general powers and duties which are conferred upon the various commissioners' courts of the State. We find these enumerated under section 6755 of the Code of Alabama. Here we find no authority conferred or permission granted to the president of your board to act as such purchasing agent, but on the contrary we find under section 6750, Code of Alabama, provisions which, strongly intimate, if not in fact, prohibit your president from acting as such agent. Section 6750 of the Code reads as follows:

"Commissioners Ineligible to Certain Offices: No county commissioner is eligible to or must discharge the duties, either as principal or deputy, of any other office."

It becomes the duty of the Board of Revenue to perform all duties as to the distributing of the county's revenue, etc., and each member of the board being a contiguous part of the whole, no individual member could become the deputy or other officer of the board.

COURTHOUSE AND JAILS.

Again you will find the sheriff of your county is by statute the custodian of the Courthouse, jail and grounds.

Sections 481 and 211, Code of Ala.

Also under section 280 of the Constitution of 1901, it is provided that:

"No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this state; nor, unless otherwise provided in this constitution, shall any person hold two offices of profit at one and the same time under this state, except justices of the peace, constables, notaries public, and commissioner of deeds."

It may be argued that purchasing agent for your county could not be construed to be an officer under the Constitution. For sake of argument only, we will concede this as being true, but it could not be contended that he would not be a deputy of the board acting for it and in its stead. So again, we would run in direct conflict with **section 5750, Code of Alabama, supra.**

Section 281 of the Constitution of Alabama 1901, reads as follows:

"The salary, fees, or compensation of any officer holding any civil office of profit under this state, or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

To designate the president of the Board of Revenue as purchasing agent for your board in performing these duties for which he would receive certain compensation, would be in plain conflict with this section of the Constitution.

After due consideration of your inquiry, I hold that the president of your board is not only prohibited by implication, but under well-defined statutes of the Code of Alabama and of the Constitution of the State, from acting in the capacity of purchasing agent for your board.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

January 25, 1927.

Hon. Bibb Graves,
Governor of Alabama,
Capitol.

Dear Sir:

I herewith submit to you my opinion as to the legality of the application for extradition of P. C. Carrie, made by His Excellency, the Hon. Clifford Walker, Governor of the State of Georgia, the application charging said Carrie with public drunkenness, a misdemeanor under the laws of Georgia.

As the legality of a requisition for extradition of one charged with the commission of a misdemeanor has not been the subject of opinion by our reviewing courts, and no opinion has heretofore been rendered by the Attorney General on the matter, I have gone into the proposition fully and herewith submit to Your Excellency the result of my investigation.

Our statute pertaining to the delivery of a fugitive from justice reads as follows:

> "Any person charged in any state or territory of the United States with treason, felony, **or other crime,** who shall flee from justice, and be found in this state, must, on the demand of the executive authority of the state or territory from which he fled, be delivered up by the Governor of this State, to be removed to the state or territory having jurisdiction of such crime."

The Constitution of the United States provides:

> "A person charged in any state with treason, felony, or other crime, who shall flee from justice; and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."
>
> Article 4, Section 2, Federal Constitution.

The authorities are uniform in holding that the expression "other crime" includes misdemeanors.

> Ky. v. Denison, 24 How. 66.
> Ex parte Reggel, 114 U. S. 642.
>
> Moore, Extradition and Interstate Rendition, Vol. 2, p. 826, 837-838.

As to when it is your duty to honor requisitions see **Opinions** of **Attorney General,** 1918-20, p. 85.

In addition to what is said in that opinion, I would state that it is within your province to determine

> **First:** Whether the person is charged with a crime.
> **Second:** Whether that person is a fugitive from justice.

It has been said that the mere fact that the accused has left the jurisdiction of the state in which the crime was committed, and is found in another state, would not be of itself sufficient to constitute him a fugitive from justice. It must further appear that his removal from the state in which the act was done was for the purpose of avoiding prosecution therefor; and in order to

determine the question whether he has fled in order to escape justice, all the circumstances in relation to the commission of the offense, the subsequent conduct of accused, the time and manner of his leaving the state, etc., should be inquired into.

A. & E. Cyc. of Law, Vol. 12, "Extra," p. 602.

This is a question for Your Excellency to determine.

Idem. p. 604.

After examining the application for requisition of P. C. Carrie, and the accompanying documents thereto attached, I respectfully submit that, in my opinion, such application is in due form, and complies with all the requirements of law.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Rayburn: RF
Jan. 27, 1927.

Hon. Pat M. Dannelly,
Judge of Probate,
Wilcox County,
Camden, Alabama.

Dear Sir:

In your letter of January 25th, you ask the following question:

"If parties wishing to marry, obtain license in Wilcox County, can they legally go to another county and marry using this license?"

In answering this inquiry, I respectfully refer you to Section 8998, Code of 1923, which is pertinent to your question, supra, and which reads as follows, to-wit:

"No marriage shall be solemnized without a license, to be issued by the judge of probate of the county in which the woman resides or in which the ceremony is to be performed; which license is an authority to anyone qualified to solemnize marriage to join together in matrimony the persons therein named."

You will note that this statute establishes the jurisdiction of marriage license, and does not, in so many words, lay down the locus in quo the marriage ceremony may be performed. Under this statute, if the license is "issued by the judge of probate of the county in which the woman resides," in my opinion, the marriage ceremony may be legally performed in any county in the State of Alabama. Nowhere do I find a statutory or constitutional inhibition, as to the place of performance of the marriage ceremony.

If at any time I can serve you, I shall be glad to do so.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

January 28, 1927.

Hon. W. B. Allgood,
State Treasurer,
Capitol.

Dear Sir:

By your letter of January 24th, you request an opinion of this office as to the legality of the issuance of a duplicate bond in lieu of one which has been mutilated.

You submit the following statement of facts: White, Weld & Company of New York City, hold one Fifth Series Alabama 4½ per cent Harbor Improvement Bond, dated December 1, 1926, with the June, 1927, and all subsequent coupons attached thereto. This bond has, in some way, been mutilated since delivery by the state, and the holders are anxious to secure another bond in lieu thereof. The cost of printing a duplicate bond is said to be $15.00, which White, Weld & Company agree to pay. This bond was signed by the officials, named by statute, of the past administration.

Section 843 of the Code of Alabama is the only law I am able to find relating to the issuance of duplicate state bonds. A Harbor Improvement Bond is a State bond. The Code Section referred to authorizes the issuance of a duplicate State bond under the following, among other conditions:

> "When by clear and satisfactory evidence is it made to appear to the Governor, State Auditor and State Treasurer that any duly registered bond of the State bearing interest, **has been lost or destroyed so that the same is not held by any person as his property.**"

It will be noted that before a duplicate bond can be issued, the original bond must have been "lost or destroyed." The bond referred to by you, as shown by your statement of facts, has not been lost. Hence the question arises—has it been destroyed? You will observe that the Code section referred to requires that before there can be a legal issuance of a duplicate, the original bond must have been not only "destroyed" but must have been "destroyed so that the same is not held by any person as his property." From your statement of facts, and because you have exhibited to me the original bond, which is now held by White, Weld & Company as their property, it is clear that the bond has not been "destroyed" as the law contemplates.

My judgment is that statutes authorizing the issuance of duplicate State Bonds should be strictly construed, and I am of the opinion, that the Code section above mentioned permits of the issuance of a duplicate bond only where the original bond has been lost or completely destroyed.

From the records in your office, doubtless, you can ascertain the correct amount of the bond in question and all other data relating to it, and under such circumstances, being aware of such details from records before you, I am of the opinion that you would be legally justified, and no doubt it would

be the proper course to pursue, to purchase the outstanding bond in question.

There seems to be no authority of law for the issuance of a duplicate State bond, where the original bond is still held by a person as his property and is only mutilated.

Trusting that this answers your inquiry, I am

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Evans:J
January 28, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of January 24th.

In reply will say that it is my opinion that Section 3023 of the Code of 1923, is not now the law, and that Boards of Revenue and Courts of County Commissioners are without authority to make any of the exemptions provided for in said section—among which are factories for the spinning of thread and yarns and the knitting and weaving of cloth and other fabrics of cotton and wool in this state, etc.

I am enclosing opinions of the office giving reasons for such opinion, which I approve as correct.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Haynes: RF
Jan. 28, 1927.

Mr. J. W. Henson,
Sheriff,
Washington County,
Chatom, Alabama.

Dear Sir:

Your favor of January 26, 1927, requesting an opinion from this office as to the power of the Commissioner's Court of Washington County to provide a special deputy sheriff to assist in the enforcement of the violation of traffic laws, etc., and paid for by the county through the Commissioner's Court, has been received.

The Commissioner's Court of the various counties are not such courts as are provided for by the Constitution of the state, but are purely creatures of the statute. Therefore, whatever duties are imposed and powers conferred on said courts, these powers and these duties must be derived from legislative enactment. They have no inherent or constitutional powers.

117 Ala. 203 (23 So. 807); 70 Ala. 145.

The court being of statutory origin and all its powers being derived from the Legislature, it naturally follows that when they act they must be able to point to a direct authority of law for their actions.

We find in payment of the salaries of deputy sheriffs of your county that under section 10188 of the Code of Alabama, the Commissioner's Court is limited to the payment of the salaries of one deputy or chief deputy whose salary shall not be less than nine hundred dollars ($900.00) or more than fifteen hundred dollars ($1,500.00) per annum, payable in twelve equal monthly installments. This statute reads as follows:

> "In all counties of the State of Alabama which now have not more than two hundred thousand inhabitants according to the last federal census or which may hereafter have such population according to any federal census hereafter taken, in which the sheriff is not on a salary basis under and by virtue of a constitutional amendment, the sheriff of such county must have one chief deputy, and may have as many other deputies as he may think proper, but the coroner of such county shall not be appointed a deputy. Said chief deputy shall be appointed by the sheriff of the county to hold office at the pleasure of the sheriff, and for his services shall receive a salary of such amount as may be fixed by the court of county commissioners, board of revenue or other governing body of the county in which such chief deputy is appointed not less than nine hundred and not more than fifteen hundred dollars, payable in twelve equal monthly installments out of the treasury of the county upon the warrant of the board of revenue or court of county commissioners of such county."

It is true the above statute provides that the sheriff may have as many deputies as he thinks proper, but makes no provision for the payment of their salaries by the county except the one which it designates as chief deputy. Therefore, the other deputies that he may have if he sees fit must look to him for their compensation for services. This is the only provision made for the payment of deputies and from the authority cited, supra, any attempt on the part of your commissioner's court to pay others would be without authority of law and unwarranted.

When money is sought from the public funds by an officer, such payment is made only when payment is expressly authorized and expressly imposed by statute, and such payment cannot rest on implication.

State Auditor vs. Bowers, Tax Collector, 187 Ala. 606 (65 So. 819).

From the above authority and reasoning we must conclude that your county commissioners are without authority to pay the salary of the deputy that you suggest and has only the authority to pay for the chief deputy pointed out in the statute.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

McCall:J
January 29, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

Your letter of January 28th, has been received. In it you state:

"Hereunto attached is a copy of House Bill No. 4, Goodwyn, Governor's No. 11, 'An Act to Amend Section 906 of the Code of Alabama of 1923,' which Act has duly passed both houses of the Legislature, and was approved by the Governor on January 28, 1927.

"Please advise as to validity of the same, and also date on which payment as provided by this Act should begin."

In answer thereto I beg to advise:

1. **As to the validity of the Act.**

By Section 906 of the Code of Alabama, **(Act, February 11, 1919,** p. 33, Sec. 1, **as amended** by **Act of February 8, 1923,** p. 22, Sec. 1) provision is made for the establishment of a "State Budget Commission" to be composed of four members, viz: the Governor, the Attorney General, the State Auditor, and the Chief Examiner of Accounts, of which Commission the Governor is Chairman.

By Section 918 of the Code of Alabama, it was provided that the members of said Commission, except the Chairman, should be paid One Hundred Dollars per month "for services rendered as members of the Budget Commission."

Act, Sept. 29, 1919, p. 878, Sec. 14½.

Thus it will appear that by the Act of September 29, 1919, the Attorney General, State Auditor and Chief Examiner of Public Accounts were each allowed One Hundred Dollars per month for services on the Budget Commission as created, supra, but the Governor was to receive nothing for his services on said Commission. By an Act of February 10, 1923, (Section 868, Code of Alabama), it was provided that the Attorney General should give his opinion in writing or otherwise, on questions of law connected with the duties of certain county officers, and other officers required to collect, disburse, handle or account for, public funds. For this new "and additional" duty, and for duties required of him as a member of the Budget Commission, provision was made that he should receive $2,000.00 per year. Therefore, under said Section 868 of the Code the Attorney General ceased to draw compensation as provided in Section 918 of the Code. Later, by an Act approved September 29, 1923 (Acts 1923, p. 789), the salary of the Attorney General was fixed at Six Thousand Dollars per year for all duties then imposed upon him. By the same Act, the salary of the Chief Examiner of Public Accounts was fixed at Five Thousand Dollars per year, and the salary of the State Auditor was fixed at Four Thousand Dollars per year, "for all duties and services now required or which may hereafter be required" of them. The Act of September 29, 1923, supra, could not, however, bind any succeeding Legislature, and it is a well established principle of law that an act can be

repealed both expressly and by implication, by a succeeding Legislature in so far as it affects any such succeeding Legislature.

The Act approved January 28, 1927, recreates the State Budget Commission by amending Section 906 of the Code so as to compose the Budget Commission of eight, instead of four members. The membership of the recreated Commission is as follows: The Governor, the Attorney General, the State Auditor, the Chief Examiner of Accounts, the State Treasurer, the Secretary of State, the Commissioner of Agriculture and Industries and the Chairman of the State Tax Commission. Of the officers named, all except the Chief Examiner of Accounts and the Chairman of the State Tax Commission are officers who fall within the provisions of Section 118 of the Constitution, which provides that they

> "shall receive compensation to be fixed by law, which shall not be increased or diminished during the term for which they shall have been elected."

The same officers also fall within the provisions of Section 281 of the Constitution, which provides that

> "The salary, fees or compensation of any officer holding any civil office of profit under this state, shall not be increased or diminished during the term for which they are elected or appointed."

My judgment is, however, that neither the Chief Examiner of Public Accounts, not the Chairman of the State Tax Commission fall within the provisions of either one of the above mentioned sections of the Constitution. Each of them is appointed by the Governor and neither of them has any definite term of office, and the salary of either or both of them for duties presently imposed, or for additional duties could be increased or diminished at the will of the Legislature.

In view of the foregoing and because the Governor and Attorney General by the Act of January 28, 1927, are to draw no compensation for services on the Budget Commission as recreated, we are left to a consideration of the question as it affects only the status and rights of the State Auditor, the State Treasurer, the Secretary of State and the Commissioner of Agriculture and Industries, of which officers named all are new members of the Budget Commission, except the State Auditor.

By the Act of January 28, 1927, the State Auditor is not only a member of the Budget Commission as provided by Section 906 of the Code, but there is imposed upon him the new and additional duty of Secretary to said Commission. We come, therefore, to this proposition:

> **First:** Can the Legislature make the State Treasurer, the Secretary of State and the Commissioner of Agriculture and Industries members of the State Budget Commission?
>
> **Second:** If so, can the Legislature authorize them to draw additional compensation for their services as members of said Commission?
>
> **Third:** The State Auditor, having previously been made a member of said Budget Commission by Section 906 of the Code, and in view of the **Act of September 29, 1923,** supra, fixing his salary for all services

rendered or required of him, regular and additional, can the Legislature subsequently provide that he shall receive additional compensation as a member of said Budget Commission, and for the additional duty of being Secretary to it?

In answer to the first proposition, I invite your attention to **Tayloe v. Davis,** 212 Ala., p. 283-286, where the Supreme Court of Alabama, considered this question, saying:

> "When in the exigencies of a government, it is necessary to create and define new duties, the legislative department has the discretion to determine whether additional offices shall be created; or whether these duties shall be attached to and become ex officio duties of existing offices."

Without doubt, there is an outward as well as an inward limitation on the power of the Legislature to impose new duties on an office created by the Constitution, or to restrict and abridge the proper, inherent, power, functions and duties of that office. In my opinion, the Legislature has no unlimited discretion in respect to the nature or duties which it may require to be performed of the State Treasurer, Secretary of State and Commissioner of Agriculture and Industries. For instance, I do not believe that the Legislature could compel the Treasurer, ex officio, to act as Warden of the State Prison, or require the Commissioner of Agriculture and Industries to superintend the State Insane Asylum, or require the Secretary of State to act as manager of a State Hospital. I think a limitation is necessarily implied from the definition of the offices named. From the earliest period of our history as a nation, almost every state in the Union has had a Secretary of State and a State Treasurer. An examination of the debates of the Constitutional Convention of 1901 clearly shows what the framers of the Constitution had in mind when they created the office of Agriculture and Industries. The general nature of duties pertaining to each of these offices must be presumed to have been perfectly well known to the framers of our Constitution, and we must assume that the framers of that instrument creating those offices had in mind the same general class of duties which were well known to have pertained to such offices elsewhere, and I think, therefore, that while the State Constitution does not attempt to define the particular duties of such officers, that being the province of the Legislature, it must be presumed that the Legislature will prescribe only such duties as in their nature have heretofore appertained to similar offices elsewhere. The Legislature may exercise wide discretion and a liberal interpretation of its powers must be pursued, and it is the duty of the Courts to show deference to the Legislative authority, solving the doubt in favor of the power as exercised, interfering only in a clear case where the Legislature has manifestly transcended its authority by imposing upon such an officer duties which, in their nature, are wholly foreign to that office.

An examination of the duties, powers and functions of the State Budget Commission discloses clearly that that Commission has little or no relation with the duties, powers and functions by law otherwise imposed on the officers named. They are certainly new and additional duties, powers and functions in every sense. If these officers see fit, voluntarily, to perform

these new and additional duties, they do not thereby enlarge the scope of their official duties as constitutional officers. Therefore, if, having performed a service which, under the Constitution, is wholly foreign to their offices, and which is not and cannot become a part of the official duties of such officers, and the Legislature sees fit to compensate them for this unofficial service, there is no constitutional impediment to hinder them from receiving and accepting such additional compensation.

What I have said above, I believe answers the first two propositions as to the State Treasurer, Secretary of State and the Commissioner of Agriculture and Industries, and the reasoning hereinabove set forth applies with equal force to the State Auditor, with this additional statement:

While it is true that by Section 906 of the Code, the State Auditor was a member of the Budget Commission, by the **Act of January 28, 1927,** he is not only a member thereof, but is Secretary thereto. Certainly this is a new and additional duty for which the Legislature could grant him extra compensation without violating the constitution. Now it is true that by an **Act approved September 29, 1923,** heretofore referred to by me, the Legislature of 1923 attempted to fix salaries of certain public officers, for all duties regular and additional, then or thereafter imposed. As said above, that act could not bind a succeeding Legislature, and where the present or any succeeding Legislature, by an Act duly passed and approved, has seen fit to grant to a member of the Budget Commission compensation for duties utterly foreign to his office, though they be extra and additional duties, previously imposed, or later, imposed, the Legislature has a right to do so.

Opinions, Attorney General 1918-20, p. 313.
Tayloe v. Davis, 212 Ala. 262.
Love v. Baehr, 47 Ala. 364.

I am, therefore, of the opinion that the Act of January 28, 1927, is constitutional; that the State Auditor, Chief Examiner of Public Accounts, State Treasurer, Secretary of State, Commissioner of Agriculture and Industries, and Chairman of the State Tax Commission may each draw the compensation provided by the **Act of January 28, 1927.**

In answer to your last question, as to when payment as provided by the Act should begin, I beg to advise that it appears that from investigation that the Act was approved January 28, 1927, and, therefore, it could be effective for the purposes therein specified only on and after January 28, 1927. I am, therefore, of the opinion, that payment of compensation, as provided by the Act, to the officers named, should begin with and including January 28, 1927.

Trusting that this communication fully answers your inquiry, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

January 31, 1927.

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Capitol.

Dear Sir:

You asked to be advised upon the following questions, viz:

1. Has anyone authority at this time to send a prisoner under the death sentence, to Kilby Prison for commitment to await the execution of the sentence?

2. Should commitment papers have been executed and transmitted?

3. Should the expense of transporting the convict be paid by the Convict Department?

4. Can the Convict Department pay the traveling expenses of the sheriff?

Section 5311 of the Code provides that, within ten days after the death sentence has been pronounced upon a convict, the Circuit Clerk shall issue a warrant in the nature of a transcript or history of the cause, under the seal of the court, directed to the Warden of Kilby Prison commanding him to proceed at the time and place named in the sentence of the court to electrocute the convict. This warrant is to be delivered to the sheriff of the county who in turn shall deliver same together with the convict to the Warden of Kilby Prison at Montgomery.

After a careful consideration of the warrant issued in the instant case by the Circuit Clerk of Houston County, I find same to comply with the mandate of the statute last referred to. This is sufficient authority for the commitment of the convict in Kilby Prison, to await the date set for his execution.

Section 5310 of the Code provides that, all convicts upon whom the death sentence is **pronounced subsequent** to January 1, 1927, shall be electrocuted. However, the execution of the sentence cannot be effected until on or after March 1, 1927. And, whenever the death sentence is pronounced after January 1, 1927, to be executed on or after March 1, 1927, such execution must in all respects comply with all mandatory provisions of Sections 5309, 5310, 5311, 5312 and 5319 of the Code of Alabama. This discussion should dispose of your first query. It is, therefore, the opinion of this office that the convict is properly committed to Kilby under the proper commitment papers. This should also dispose of your second query.

Referring to your third and fourth questions, in the opinion of the writer the expense for transporting the convict, including the expenses of the sheriff should be borne by the county in which the prisoner was convicted as provided by Section 3741 of the Code of Alabama.

Your first inquiry, as to the legality of the commitment of the convict to Kilby, of necessity calls for a construction of the electrocution statutes viz: Section 5309, 5310, 5311, 5312 and 5319, as to the constitutionality of same.

The Act was properly enacted and there are apparently no constitutional defects.

It is true that the title of the Act may not state or set out in full each

provision in the Act. However, a careful consideration of the title and the provisions of the Act disclose that there were no provisions enacted which were not germane to the purpose as stated in the title. To the contrary, only that was enacted which provided the necessary machinery for carrying out the purpose of the Act as expressed in the title.

State vs. Street, 117 Ala. 203.
State vs. Crook, 126 Ala. 600.
Lindsay vs. State, 120 Ala. 156.
A. G. S. R. R. Co. vs. Reed, 124 Ala. 253.
Jackson vs. State, 136 Ala. 96.

Hoping the foregoing expression will serve to make the matter clear, I return herewith the warrant or commitment paper issued by the clerk of Houston County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Rayburn:RF
Feb. 1, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

In your letter of January 29th, you request my official opinion as to the constitutionality of an Act, entitled,

"An Act, To provide for the expenses incurred by members of the Legislature of Alabama while in attendance upon sessions of the Legislature."

The enacting clause of the Act meets all of the requirements of Section 45 of the Constitution.

Does the Act in question offend against Section 281 of the Constitution, which provides that:

"The salary, fees, or compensation of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed?"

If the act does not offend against this section, it is constitutional. If it does offend, it is unconstitutional.

In passing upon this question, we must look to the legislative intent, giving words their accustomed meaning, and the relation which they bear to other words, construing all acts in pari materia together, as if they were one law. By this method we may arrive at the legislative declaration of the meaning of a word that will govern the construction of a statute.

In passing upon the constitutionality of this act, I have in mind a well established principle of law, which needs no citation of authority, that, where a

statute is fairly susceptible of two different constructions, that which will leave the statute valid and constitutional is to be preferred.

In the last analysis, the constitutionality of the act, here considered, depends upon the meaning of the word "compensation," as used in section 281 of the Constitution. This section provides that the "salary, fees, or compensation of any officer, etc.," shall not be increased or diminished during the term for which an officer was elected or appointed.

Salary is defined to be, "a fixed sum to be paid by the year or periodically for services."

Rebaden vs. Buffalo Savings Bank, 117 N. Y. Supp. 282.
"Expense incurred clearly would not be considered as salary."

A fee, as used by our statutes with reference to the remuneration of public officers, is a reward or compensation allowed by law to an officer for specific services performed by him in the discharge of his official duties. Again, "expense incurred" could not be considered as a "fee."

The word "compensation" as used in our statutes means suitable reward for services; a compensation or reward paid in return for the performance of an official duty. I do not find in our statutes the use of the word "compensation" to cover expense incurred. I do find "compensation" to be synonymous with "salary," but do not find the word "compensation" anywhere, used synonymously with the word "expense."

In Wisconsin, a statute was enacted which provided that each of the judges of the circuit court should receive four hundred dollars ($400.00) per annum for his necessary expenses in the discharge of his duties, in addition to his salary then provided by law, and the act provided that it should apply to the several judges then in office. In passing upon the constitutionality of this act, the court held that such allowance was not a part of the compensation of the judges, within the purview of the constitution of Wisconsin, which provided that the compensation of a public officer should not be increased or diminished during his term of office.

Milwaukee vs. Halsey, 136 N. W. 139, 149 Wis. 82.

The furnishing of meals, by the state, to members of the Legislature attending dedicatory services, was not regarded as compensation within the meaning of the Constitution which prohibited the members from receiving any compensation other than the statutory salary, as held in

Russ vs. Commonwealth, 60 Atl. 169, 210 Pa. 544.

An expense allowance cannot be regarded as fees, salary, or compensation.

Archibald vs. U. S., 217 Fed. 165, 167.

Again, it is held that, "compensation," as used in the Constitution, Art. II, Sec. 9, providing that the compensation of any county, city, town, or municipal officer shall not be increased after his election or during his term of office, is synonymous with "salary," and does not include traveling, or other incidental expenses.

Kirkwood vs. Soto, 25 Pal. 488, 489, 87 Cal. 394.

Section 49 of our Constitution provides that—

"The pay of the members of the Legislature shall be four dollars per day, and ten cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled."

Could "expense" be interpreted to mean "pay," as used in this section? I think not. These two words mean opposite, and different things. And nowhere are they interpreted to mean one and the same thing.

Since the adoption of the present Constitution many acts have been passed by the Legislature, after the commencement of terms of office, providing for the payment of necessary expenses incident to the offices. The constitutionality of these provisions, so far as I am advised, has never been questioned. In this connection, I wish to quote a part of an opinion of the Attorney General, viz:

"The only provisions of the Constitution which could have the effect of preventing the present incumbents from receiving the benefit of this change in the statute are found in Section 68 of the Constitution, which prohibits the increase or decrease of fees and compensation of officers during their terms of office and section 281 of the Constitution, which provides that the salaries, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed.

"In an opinion which I rendered to Judge Chas. E. McCall, Chief Examiner of Accounts, under date of December 27, 1923, I held that these provisions of the Constitution did not have the effect of preventing a circuit solicitor from receiving the benefit of an act which authorized the payment of expenses incurred in the prosecution of his official duties, said act having been passed during the term for which he was elected.

"I quote from that opinion as follows:

" 'Finally may an officer's **compensation** be said to be increased by permitting him to be reimbursed for necessary and actual expenses incurred in the prosecution of his official duties? I think not. In Throop on Public Officers—428, Section 442—the text writer, citing **Briscoe v. Clark Co.,** 95 Ill. 309, and **Kirkwood v. Sate,** 87 Cal. 394, in support of his views, uses the following language:

" '* * * it has been held that a constitutional provision, forbidding the increase or diminution by the county board of a county officer's 'compensation' does not apply to allowances for the hire of clerks, fuel and other official expenses, which may be fixed from time to time, at such sums as may be deemed proper by the county board.' "

Opinions of Attorney General, 1924, Vol. 2, page 728.

I would not seek to remove or alter the landmarks set by our fathers, in our organic law. For this reason, I have carefully looked into the proposition here presented. And I have come to the conclusion that the Act in ques-

tion is not violative of Section 281 of the Constitution, and, therefore, is constitutional.

You desire to know whether or not the Act is retroactive. It clearly shows on its face that it is not. Therefore, you are advised that it will apply to expenses incurred on, and after, the date of its approval by the Governor.

You further request that I draw a form upon which the President of the Senate and the Speaker of the House would approve the maintenance accounts, provided for in said Act. In this regard, permit me to say that the Act calls for no special form, but is a simple statement of the expense incurred by each senator and representative. Such a statement does not have to be itemized, nor sworn to.

Trusting that the foregoing will serve your purpose, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 3, 1927.

Hon. C. P. Butler,
Judge of Probate,
Opelika, Ala.

Dear Sir:

Your favor of the 1st requesting an opinion as to whether A. C. Moore who has been appointed Notary Public in Lee County, Alabama, can take acknowledgments to deeds, etc., in Russell County. We take for granted that Mr. Moore is what is known as a commercial Notary Public and not a Notary Public with the powers of the Justice of the Peace.

I beg leave to advise that in my opinion a Notary Public appointed by the Governor under Section 9238 of the Code cannot go out of the county for which he had been appointed and take acknowledgments, etc., but he can while acting in his county take acknowledgments to conveyances, etc., for property which is located in another county.

Coree v. Wadsworth, 8 So. Reporter, 712.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 3, 1927.

Hon. S. H. Blan,
State Auditor,
Montgomery, Alabama.

Dear Sir:

I have your letter of February 1st, together with your certificate concerning same. You request that I advise you as to the constitutionality of House Bill No. 18 (Act approved January 28, 1927).

This Act makes an appropriation of Six Hundred Thousand Dollars to the State Board of Education "for the further support and maintenance of the public schools of the State," etc.

While nowhere in the written law of this State is it specifically stated that the Attorney General shall pass upon the Constitutionality of Acts of the Legislature, I am convinced, from a reading of Sections 833 and 869 of the Code, together with the fact that the Attorney General is mentioned, **co nomine**, in the State Constitution, and for this latter reason, because this State operated in part under the common law, and because a historical survey of the nature and origin of the office of the Attorney General, discloses that this was one of his functions from the very beginning of the office, the Attorney General possesses this power. The Constitution states that the Attorney General shall perform such duties as may be "prescribed" by law. A learned writer on the subject of law has stated that law is a rule of civil conduct prescribed by the supreme power in a State commanding what is right and prohibiting what is wrong, and this same writer proceeds to define the field of law thus prescribed into **lex scripta** (written law) and **lex non-scripta** (unwritten law). Therefore, though the Legislature by an Act has never **specifically** stated that the Attorney General shall pass on the constitutionality of an Act (though this power may possibly be inferred from his authority and duty to advise various officers) his authority and duty to do so, in my opinion, need not be **prescribed** by written law, because I believe it is to be an inherent power of the office in this State.

When the terms of a constitution cannot be made plain from a careful examination of the whole instrument, extrinsic aids may be resorted to, as a consideration of the object or purpose of the provisions, **the proceedings of the framers of the Constitution,** and contemporaneus construction. (**Cooley, Principles,** 3rd Ed. 396-9; **U. S. V. Healey** 1600 S. 136; **Storey, Const. Sec.** 407). In other words, in determining what the people of Alabama had in mind in creating the office of the Attorney General, and what they intended the Attorney General should be and should do, I believe we may look to the Debates of the Constitutional Convention. I have done so, and I find that during the Constitutional Convention of 1901, when certain members of the Convention were discussing the office of the Attorney General, it was said by Ex-Governor Oates (a member of the Convention) with regard to the Attorney General, that, "He is the adviser of the administration with whom he serves." I also find that Mr. Fitts, ex-Attorney General of Alabama, and then a member of the Convention, who helped to frame the ordinance relating to the office of the Attorney General, in the course of his discussion of the powers, functions and duties of the Attorney General, stated:

> "It so happens, as every member of this Convention knows, that a written note signed by the Attorney General to any officer of this State is an absolute protection to that officer in any proceedings upon his official bond, * * * and * * * the opinion of the Attorney General * * * (under certain circumstances) * * * restrains payments of money and other official acts of the administration that might have taken place * * *. The Attorney General advises every officer of the State Government. * * * Next to the important work of advising the different Departments and giving opinions that protect them his next important work is to attend to cases in which the State is interested, civil and criminal, in the Supreme Court and in other courts of the State."

Debates. Constitutional Convention 1901.

No member of that Convention questioned the correctness of the views of Mr. Oates and Mr. Fitts in these particulars.

From what I have said above, I believe, it is clear that when the State Constitution of 1901 was framed, providing for an Attorney General, under the well known common law designation, the framers of that Constitution intended that the Attorney General should, among other inherent powers and functions, exercise those functions which were there expressed, regardless of whether or not the Legislature should subsequently direct such by an Act.

Having concluded that it is within the power of the Attorney General to render an opinion that an Act of the Legislature is unconstitutional or constitutional, and that his written opinion protects the officer to whom it is duly given in any proceeding on that officer's official bond, I now come to an immediate consideration of the Act approved January 28th, 1927, the constitutionality of which you have questioned.

The title of the Act is as follows:

"An act to make an appropriation of Six Hundred Thousand ($600,000.00) Dollars, or so much thereof as may be necessary, to the State Board of Education for the further **support** and **maintenance** of the **public schools of the State** in order that a minimum school term of seven months or 140 days may be provided for the current fiscal year ending September 30, 1927." (**Underlining supplied**).

There are five sections to the Act.

Section 1 appropriates Six Hundred Thousand Dollars to the State Board of Education and further states that "the amounts set out below are to be apportioned to the counties indicated, as follows:" In the same section the apportionment which follows the last above quoted expression from the Act is made to fifty-three counties of the State. There are sixty-seven counties in Alabama. The counties to which no apportionment of the Six Hundred Thousand Dollars is made by Section 1 are fourteen in number, and are as follows:

Bullock, Dallas, Greene, Jefferson, Lee, Lowndes, Macon, Marengo, Mobile, Montgomery, Perry, Russell, Sumter and Wilcox. After the name of each county of the fifty-three to which sums of money are specifically apportioned (and virtually appropriated, therefore) by Section 1 of the Act, is stated in each case the sum. The total amount of the Six Hundred Thousand Dollars appropriated by the Act which is apportioned exclusively and specifically to the Fifty-three counties, is $495,730.92, leaving an unapportioned balance of $104,269.08.

Section 2 of the Act provides:

"In addition to the apportionment set out in section one above the State Board of Education, with the approval of the Governor, shall apportion to the several counties of the State the balance of the appropriation herein provided, or so much thereof as may be necessary, under such

rules and regulations as will insure the carrying into effect the purposes of this Act, which is to provide a term of at least seven months or 140 days in the public schools of the State."

Thus, I believe, it is perfectly clear that under Section 2 of the Act, it was the intention of the Legislature that the $104,269.08, mentioned above, or so much thereof as might be necessary, was left by the Legislature to the State Board of Education to be apportioned under any rule or regulation which the Board might make so long as that rule or regulation had the effect of providing a school term of seven months or 140 days in the public schools of the State. Of course, under this Section, the State Board of Education could not apportion any part of the $104,269.08 to any county in the State, without the approval of the Governor. The expression "Shall apportion to the **several** counties of the State," is used in Section 2. **"Apportion"** does not mean "equitable distribution," but simply "to divide as the dividers think meet and proper." By reading Section 2 as a whole, and taking into consideration the whole Act, I conclude that the intent of the Legislature was that in case the public schools of any county were already running 140 days, no part of the sum last above mentioned, should be apportioned to such county.

By Section 1 of the Act, the Legislature virtually appropriated a specific amount to each of fifty-three counties in the State, and, I think, with the idea and expectancy that the sum thus apportioned to each of those several counties, should be sufficient to extend the term of each public school in each of those counties to 140 school days. I believe, however, that by Section 2 of said Act, it was the intention of the Legislature that in case the amount so set apart for each of the fifty-three counties mentioned in Section 1 was not sufficient to extend the term of each public school in such counties, to 140 days or seven months, under Section 2 of said Act, the State Board of Education, with the approval of the Governor, could use so much of the $104,269.08, unapportioned remainder, as might be necessary to extend the terms of those schools and schools in **any other county or counties** in the State, to the time specified. In other words, my opinion is, that it was the intent of the Legislature that the State Board of Education with the approval of the Governor, could use the $104,269.08 in any county in the State, one, two, several or all, so long as the effect of such action might be to bring the schools of such subdivision or subdivisions of the State up to the required term.

Section 3 of the Act merely states the method of drawing the funds, and has no bearing on the question under consideration.

Section 4 of the Act has the effect of limiting county boards of education in the use of any funds coming into their hands by virtue of the Act. It limits the use of such funds by county boards to extending school terms to 140 days or seven months. Under Section 4 of the Act, and considering the Act as a whole, in other words, I believe that a county board of education receiving any funds provided by the Act could not use such funds for any purpose other than the extension of the terms of the public schools in their respective counties, and that such Boards would be prohibited from using such funds to extend those schools beyond a full term of 140 school days. In other words, assuming the appropriation legal, I believe it would be unlawful for a

county board of education to use any part of the funds coming to it through this appropriation for the purpose of building school houses, repairing or maintaining them, or for any other purpose than for the payment of salaries of teachers actually employed in teaching in the public schools of their respective counties.

I have discussed the general nature of the Act, and now we come to the consideration of its constitutionality, a question which, must of necessity have various ramifications.

In the first place, the framers of this Act were apparently very careful to leave out any reference to races. There is nothing in the Act which states that it shall apply exclusively to one race or to the schools of one race. In setting aside arbitrarily the amounts specified in Section 1 to only fifty-three of the sixty-seven counties of the State, there is no statement in the Act that the amounts so set aside shall be used in extending the terms of white schools to the exclusion of the negro schools or vice versa, and from a reading of the Act as a whole, I do not believe that one can say the appropriation is for the exclusive use of white or negro schools. I must assume that the appropriation is for both classes of such schools, even though upon investigation as to what method was used in arriving at the amounts appropriated to the fifty-three counties mentioned in Section 1, I am informed by the State Superintendent of Education, and find, that the amount, in each case, for each of the fifty-three counties thus mentioned was arrived at by a consideration of that part of the annual report of the county superintendent of education of each of those counties relating solely to the white schools of those counties. In other words, Autauga County is mentioned in Section 1 of the Act as one of the fifty-three Counties to receive a specific amount. The amount specified for Autauga County to receive is $2,186.83. The annual report of the county superintendent of education of Autauga County for the fiscal year ending September 30, 1926, discloses that certain of the white schools of that county did not run 140 school days. Upon the annual report of that Superintendent the name of each white school is set forth, together with the number of days each was in session, followed by a statement of the amount of money, state, county and otherwise, which was paid to the teachers of the school. The amount paid to the teachers of that school was divided by the number of days that school was in session, and the resulting figure showed how much it cost for teachers' salaries for that school for one day. The number of days that school was in session, if less than 140 days, was subtracted from 140 days and the resulting figure was multiplied by the per diem amount it cost to run said school. This last resulting figure for each white school only in the county so affected was added and the total showed how much was necessary to bring the term of only each white school in that county up to 140 days. Apparently the fifty-three counties named in Section 1 of the Act were worked out this way and the figures set out after the name of each county specified in Section 1 of the Act are those figures. I don't know that this makes any particular difference, for after all, we might just consider the amount appropriated to each of the fifty-three counties to be an arbitrary amount. One thing is certain, i.e., the amounts set out in Section 1 of the Act were not based on the last Biennial School Census, or the constitutional rule of apportionment of public school funds.

Section 256 of the Constitution of 1901 provides, as follows:

"The Legislature shall establish, organize and maintain a liberal system of **public schools** throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years. The **public school fund** shall be apportioned to the several counties in proportion to the number of school children of school age therein and shall be so apportioned to the school districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race."

Section 257 of the Constitution of 1901 provides:

"The **principal** of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations."

Section 258 of the Constitution of 1901 provides:

"All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the **public schools.**"

Section 259 of the Constitution of 1901 provides:

"All poll taxes collected in this State shall be applied to the **support** of the **public schools** in the respective counties where collected."

Section 260 of the Constitution of 1901 provides:

"The **income** arising from the Sixteenth Section trust fund, the surplus revenue fund until it is called for by the United States Government and the funds enumerated in Section 257 and 258 of this Constitution, together with a special, annual tax of thirty cents on each one hundred dollars of taxable property in this State, which the Legislature shall levy, shall be applied to the **support** and **maintenance** of the **public schools,** and it shall be the duty of the Legislature to increase the **public school fund** from time to time as the necessity therefor and the condition of the treasury and the resources of the State may justify; * * *."

Section 261 of the Constitution of 1901 provides:

"Not more than four per cent. of all **moneys raised or which may hereafter be appropriated** for the **support of public schools,** shall be used or expended otherwise than for the payment of teachers employed in such schools; provided, that the Legislature may, by a vote of two-thirds of each House, **suspend the operation of this section.**"

By Section 262 of the Constitution the supervision of the "public schools" is vested in a superintendent of education. By Section 263 of the Constitution it is provided that no money raised for the support of the "public schools" shall be appropriated to sectarian or denominational schools. By Section 264 of the Constitution the management and control of the "State University" is outlined. By Section 265 of the Constitution provision is partly made for the support and maintenance of the "University of Alabama." By Section 266 of the Constitution provision is made for the management and control of the "Alabama Polytechnic Institute." By Section 268 of the Constitution provision is made for the taking of a school census in all towns and districts throughout the State, biennially. By Section 269 of the Constitution the several counties of the State are authorized to levy and collect a special one mill tax **for the support of public schools,** and in this same section, a limitation is placed upon the method of apportioning said tax and the use to which said tax may be put. The limitation is directed at the county board of education which has control of said local tax. "Public schools" meant "common schools." In that case, the Supreme Court, in my judgment, took the position that the public school system referred to, constituted a system of public education separate and distinct from the other educational institutions of the State. It was there stated:

> "It is more than a presumption that the term **public schools** was employed in the Constitution in its popular meaning, and sense—the system of the public schools to which the people of the state had been accustomed and as they would understand it in adopting the Constitution. * * *
>
> "The system may consist of graded schools—from the primary to the high schools, and of higher grades; but provision should be made, when requisite in each school for the education of all the children within the constitutional ages in the same branches; age, capacity and advancement only being regarded. The intention is that education in the same branches shall be equally accessible to all the children in the State. * * *
>
> "We do not doubt the power of the legislature to establish universities or other institutions of learning, distinct from the public schools, and to make appropriations for this purpose, provided the constitutional majority is obtained; * * *."

Elsberry v. Seay, Supra, See also Schultes v. Eberly, 32 Ala. 242.

I think it is clear from that decision that our Highest Court has held the Legislature to be empowered to establish auxiliary and higher institutions of learning, which though a part of the educational system as a whole, using the word "system" in its broadest sense, could not be construed to be a part of the "public school system," or "common schools," which were to be maintained by the funds and in the manner provided by the Constitution. My belief is, therefore, that where the Legislature established county high schools and state secondary agricultural schools or normal schools, while such institutions, are necessarily a part of our public school system (or educational system, properly speaking) such institutions are not a part of the "common school system," which, in my opinion, is the only "public school system"

which can participate in funds mentioned in the Constitution and under the constitutional rule of apportionment. In other words, I grant the Legislature has a right to establish a county high school, or several of them, and appropriate state funds direct to such high school. But I do not believe that the Legislature can establish county high schools such as it has established, or normal schools or state secondary agricultural schools, such as it has established, and provide that such institutions, thus established, shall be supported out of funds appropriated to the counties of the State upon the basis of the Biennial School Census and under the constitutional rule of apportionment. For instance, I do not believe that the Legislature could establish a common school system of one kind for Montgomery County and a common school system of another kind for Jefferson county. I believe that the system must be a uniform system so far as the common schools are concerned, and, while each county constitutes a unit in the system, it is not a system separate and distinct from the State system to such an extent that the Legislature could appropriate state funds to that unit as a separate and distinct system. The "public school system" or "common school system" participating in constitutionally apportioned funds is a unit in itself, inseparable and indissoluble, separate and distinct from the auxiliary units, such as higher institutions, established by the Legislature and maintained by direct appropriations thereto, in differing amounts.

While the Legislature establishes Normal Schools, there is no obligation on it to give a normal school to each county of the State. The normal School System is an auxiliary system very far removed and separate and distinct from the common school system. Each of such institutions as a matter of fact, is a unit within itself separate and apart from the others, and there is no reason therefore, why being thus separate, apart and distinct, from other institutions, and the common school system, the Legislature cannot make an appropriation to one normal school, and a larger or smaller appropriation to another normal school.

I think it is perfectly clear in the light of history, and the years of our government, as a state, that the framers of the Constitution in framing Section 256 thereof intended to enjoin it as a duty, not a moral obligation, upon the Legislature that it establish a free public school system, for all the children of this state, so every child in this state between the ages of seven and twenty-one years might obtain at least a common school education. I think that in order to insure the accomplishment of this ideal and the permancy of this purpose, and because of a full knowledge of federal constitutional provisions, though they were then, as we are now, burdened with the presence of an inferior race, the framers of our Constitution very wisely fixed certain funds, for the exclusive use of the common school system of this state under a rule of apportionment, which the Debate of the Constitutional Convention indicates was about the only rule which could be put into our organic law without violating the Federal mandate I think further, that the provisions of Section 260 of our Constitution that the Legislature should increase the public school fund from time to time as necessity therefor, and the condition of the treasury and the resources of the State might justify, when read in the light of Article XIV of the Constitution as a whole, discloses clearly that it was the purpose and the intent of the framers of the Constitution, when the funds specifically

provided and mentioned, so named, in the Constitution should be insufficient to meet the needs of the common school system of this state, that it be mandatory that the Legislature increase the public school fund subject to the constitutional rule of apportionment to such an amount as, under the constitutional rule of apportionment, might adequately support and maintain the common schools of this State.

Nowhere in the Constitution can I find a different rule of apportionment for funds specifically provided or authorized to be appropriated to the support and maintenance of the public schools, other than that rule which is in Section 256 of the Constitution, and which requires that such funds shall be apportioned to the several counties, **and not to a part of them,** in proportion to the number of school children of school age therein.

On further investigatin and closer reading, we are also bound to observe that when funds mentioned, co nomine, in the Constitution are authorized to be apportioned to the several counties it is mandatory that the local authorities use at least 96 percent of all such apportioned funds for the purpose of paying the salaries of teachers "employed in such schools." This section clearly prohibits a county board of education from using more than four percent of such apportioned state funds for any other purpose than the payment of the salaries of teachers actually engaged in teaching in the common schools. By a proviso to Section 261, the Legislature, by a vote of two-third of each House, may provide that moneys **raised** or **appropriated** to the support of the common schools of the State and apportioned to the counties in the manner provided by Section 256 may be used for other purposes than the payment of teachers' salaries.

Now reverting again to Section 256 of the Constitution, which prescribed how the public school funds for the common school system of the state shall be distributed amongst the several counties—it is my belief that this being the only rule of apportionment set forth for the distribution and division of state funds **raised** or **apportioned** for the common schools of this state, it is unlawful for the Legislature to deviate from this rule of apportionment, as it has attempted to do by the Act which you have questioned.

> "Where the means for the exercise of a granted power are specified, **all other means are understood to be included."**
>
> Black's Constitutional Law 2d. Ed. p. 70.
>
> "It is not permissible to disobey, or to construe into nothingness, a provision of the constitution merely because it may appear to work injustice, or to lead to harsh or obnoxious consequences or invidious and unmerited discriminations, and still less weight should be attached to the argument from mere inconvenience."
>
> Idem. See also Corpus Juris, 699, et seq.

Again let us look at this Act from another point of view.

Is this Act a general law? Does it conform to Section 110 of the Constitution of Alabama? As shown hereinbefore, fourteen counties are omitted from Section 1 of the Act. The Act constitutes virtual appropritation of $496,000.00 to fifty-three counties in the State, and there is no requirement in

the Act as a whole that any of the counties omitted from Section 1, shall receive any part of the unapportioned Six Hundred Thousand Dollars. If the Legislature can, in enacting a law, eliminate fourteen counties from its operation, it logically follows that the Legislature may eliminate any number of counties, and by this process of elimination, it could bring down Section 1 of the Act to apply to one county only. In other words, if the Legislature can appropriate $496,000.00 to fifty-three counties in the State for the common schools of those counties, the Legislature can appropriate $496,000.00 to one county in the state. Or the Legislature could appropriate $600,000.00 to the State Board of Education and say that $500,000.00 should go to Lowndes County, and the remainder should go to Lowndes County, if the $500,000.00 should not be enough. That, in my opinion, is the legal effect of this Act. Could it be contended for one moment that a bill making an appropriation for the common schools of Lowndes County alone would be a general law, under Section 110 of the Constitution of Alabama? Let us see what Section 110 of the Constitution says:

> "Section 110. A general law within the meaning of this article is a law which applies to the whole State; a local law is a law which applies to any political subdivision or subidivions of the State less than the whole; a special or private law within the meaning of this article is one which applies to an individual, association or corporation."

Certainly no one would contend that an Act appropriating school funds to Lowndes and Dallas Counties, exclusively, would be an Act applying to the whole State. It seems to me that the proposition falls to the ground of its own weight.

I recognize the principle on which Justice Simpson, rendering the opinion for the Court, held in the case of **State ex rel Covington v. Thompson,** 142 Ala. 98, that the general election law was a general law and could be made applicable to the whole State. This law was attacked on the ground that it exempted certain counties from its operation, which counties had local laws regulating those matters in several instances. However, the law which was there contested applied in its entirety to the whole State, and could be made applicable in each county, and it automatically applied at any time the local measure was repealed. There was, in other words, a full opportunity for the complete application of the law which was there contested. But under the Act which I have before me for consideration, there is no provision that it **shall** apply to the fourteen counties which are omitted from Section 1 thereof, and the measure being transitory and emergent in nature, there is no opportunity for it to apply to each and every county of the State, unless perchance, a financial calamity should overshadow us, and not even then necessarily.

Mayfield, in his work on the Constitutions of Alabama, (p. 176) stated (reading from the note):

> "When the term 'a general law' is employed, it would be understood, without extrinsic aid, to mean a law which applies to the whole state and not to any subdivision of the State, less than the whole. Prior to the adoption of Section 110, this Court stated a mere truism when it said 'every general law is necessarily a public law, as defined, but every

public law is not a general law.' A 'general law' as used in our Constitution, is a law which operated throughout the State, alike upon all the people or all of a class * * *. Any law affecting the public within the limits of the county, or community, would be a public law, though not a general law, within the meaning of the Constitution."

Nole v. Mayor, 111 Ala. 373, 19 Sou. 735.

I think it unnecessary to deal with the Constitutionality of this Act as gaged by Section 45 of the Constitution. I believe it is unnecessary, from what I have said, to give any opinion on that phase of its constitutionality, and I refrain from expressing an opinion on it in that respect.

I recognize that in passing upon the constitutionality of an Act of the Legislature, it is my duty as well as the duty of the Courts, to try to uphold the Act. I am mindful of the expression in your letter of February 1st, where you state that you are vitally concerned in this worthy measure, and trust the measure is constitutional. I recognize the equitable features of this Act. I realize that under our way of thinking there is expediency in any measure which seeks to promote the welfare of the little children of this State. I wish it were possible that constitutionally we could give our school monies solely to that great white people in proportion to the amount which they as a race have paid, and are paying, into our treasury. I would like to see it possible to give to those counties exclusively which are most in need of school moneys, all they desire with which to raise the standards of their schools up to the maximum. But all of these things involve personal equations, personal feelings, personal desires and personal wishes, and we are not here to adjudge legalities on the basis of sentimentalisms, expediencies and equities. I think this a "worthy measure." I am "vitally concerned" in it. But, because I think it "worthy" and am "vitally concerned" in it, is no reason for it being good law. Worthy measures may be unconstitutional. Those in which we are "vitally interested" may perchance grossly violate the organic law. Policy and expediency and the general good may and should be considered, but not to overturn the fundamental law.

When I entered upon the duties of my office, as Attorney General of this State, I took an oath to uphold the Constitution of this State and the United States, and the laws are made in pursuance thereof. I don't think that any man of repute would expect the Attorney General of the Great State of Alabama to violate his oath for the benefit of his nearest and dearest friends, whether those friends be plodding now toward the horizon of life, or be amongst those whose faces are still turned toward life's morning sun.

To my way of thinking, in passing upon the validity of this Act, there stands between me and the many little children of this State an unsurmountable barrier and that barrier is the State Constitution, the organic law of a sovereignty. It may be that unfortunately I lack the uncanny acumen with which to glimpse a loophole or a round about way.

My interpretation of the situation, my honest, candid opinion is that this Act is clearly and obviously violative of Sections 110 and 256 of the Constitution of Alabama, and the spirit thereof, and that you, as State Auditor, would not be legally justified in paying out any state money thereunder.

Though, as I have said, I recognize the expediency of this measure, and its equitable features, I do not feel that it is my duty to uphold the constitutionality of an Act, which I honestly believe to be clearly unconstitutional, simply because I might personally think it to be expedient and equitable.

Hoping that the foregoing fully answers your inquiry, I am

Respectfully yours,
CHARLIE C. McCALL,
Attorney General.

Note: See Advisory Opinion, Justices of Supreme Court, later rendered. Anderson, C. J., dissenting. I am of the opinion that the Advisory Opinion Act is unconstitutional, and that therefore this office is not bound by the opinions obtained thereunder. See opinions of Miller, J., on said Act.

C. C. M.

February 4, 1927.

Hon. Charles E. Fuller, Judge of Probate,
Chambers County,
LaFayette, Alabama.

Dear Sir:

I acknowledge receipt of your favor of January 31st, in which you call for an opinion as to the amount of compensation due a deputy sheriff, under the following statement of facts:

Section 10188 of the Code provides among other things, that the salary of the chief deputy, in counties of not more than two hundred thousand population, shall be fixed by the commissioners' court, at not less than nine hundred and not more than fifteen hundred dollars per annum. The commissioners' court of Chambers County fixed the salary of the chief deputy at $600.00 per annum, prior to the adoption of the Code of 1923. The chief deputy of Chambers County has been paid $600.00 per annum before, and since, the adoption of the Code of 1923, up until the expiration of his term; viz. Jan. 17, 1927.

You desire to know, under the above mentioned facts, whether or not it is legal to pay said chief deputy $900.00 per year instead of $600.00 per year, from the date of the adoption of the 1925 Code, which was August 16, 1924.

You did not state in your inquiry, whether or not the deputy sheriff, whose salary you inquire of, was a chief deputy sheriff. You will note that, in the statement of facts, I so considered him.

Under Section 10188 of the Code, the chief deputy sheriff shall receive a salary of not less than $900.00 per year. This is mandatory. Therefore, if the deputy in question was a chief deputy, he is entitled to at least the minimum amount of $900.00 per year. And he is entitled to this from the date of the adoption of the Code of 1923, up until his service as such ceased.

You will note that I have named August 16, 1924, as the date of the adoption of the Code of 1923, therefore you are advised that the raise in salary of the chief deputy, if he is such, should begin on that date. August 16, 1924, is the true and legal date of the adoption of the 1923 Code for the

following reasons: The Act providing for the codification of our laws states that the same shall go into force and be operative on the thirtieth day after the date of the Governor's proclamation announcing its publication.

Acts 1923, page 127.

The date of the Governor's proclamation is July 17, 1924. (See front cover of Political Code.) The thirtieth day after the Governor's proclamation is August 16, 1924, and not August 17, 1924. Under the Act referred to above, the 17th day of July is not to be counted. The fact that the Governor named the 17th day of August as the day upon which the Code should go into effect, does not, in any way, alter the true date set by the Legislature for the adoption of the Code.

I would call your attention to the fact that the claim in question does not come within the scope and influence of Section 228, Code of 1923:

> "Where the law itself determines the fact and the amount of the claim, leaving nothing to be ascertained or determined by the county board, it is generally held that presentment for audit, and allowance or rejection, is not contemplated nor required."
>
> State, ex rel. City of Mobile v. Board of Revenue & Road Commissioners of Mobile County, et al., 61 So. 814; 180 Ala. 514.

Therefore, in this case, if the deputy concerning the pay of whom you inquire, was a chief deputy, Section 228 of the Code does not apply to him.

If the deputy in question was not a **chief deputy,** Section 10188 does not concern his salary. It makes no provision for the payment of salaries of deputies, other than a chief deputy. For this reason, any attempt on the part of the Commissioners' Court to pay others would be without authority of law.

Trusting that this opinion serves your purpose, I am

Respectfully yours,
CHARLIE C. McCALL,
Attorney General.

Rayburn:RF
Feb. 5, 1927.

Hon. G. H. Howard,
Probate Judge of Elmore County,
Wetumpka, Alabama.

Dear Sir:

I acknowledge receipt of your inquiry of recent date, which is as follows:

> "We have a number of laborers in Elmore County working for the Alabama Power Company, who probably are transient in the sense that this is not their permanent home, but who will be here if not discharged by the company for cause for a period of from one to two years. Please advise me whether or not such parties are subject to pay road tax in this county."

In answer to the foregoing, it is my opinion, and I accordingly advise you, that, under the authority expressed in Spann vs. The State, 14 Ala. 588, as well as our statutes governing the fixation of citizenship, the parties named in your letter are not subject to pay road tax in Elmore County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 7, 1927.

Hon. Price Williams,
Judge of Probate,
Mobile, Alabama.

Dear Sir:

I have your letter of the 3rd, which is in substance as follows:

"The State Auditor has sold certain lands in Mobile County under Sections 280-281-282 and 283 of the 1923 Revenue Code of Alabama. The latter part of Section 3125 of the 1923 Code (Section 284 of 1923 Revenue Code) is to the effect that the Judge of Probate, at the request of the State Auditor, must certify to the State Auditor the amount due the county; the amount of the school taxes and the fees of the different county officers.

"I ask you to advise me whether or not the Probate Judge is not entitled to the same commission for performing the services stated in the last part of Section 284 of the 1923 Revenue Code as he is entitled to when redemptions are made under Section 3109 of the 1923 Code (Section 268 of 1923 Revenue Code.)

"The section relative to compensation allowed Probate Judges in the matter of redemptions is Section 3117 of the 1923 Code."

According to my understanding of the matter you wish to know whether or not Probate Judges are not entitled to the same fees for certifying amounts to the State Auditor as required by Section 3125 of the 1923 Code as is allowed Probate Judges when Redemptions are made according to the manner outlined in Section 3109 of the 1923 Code.

Section 3117 of the 1923 Code, (Section 276 of the 1923 Revenue Code) states that when lands which have been bid in by the State are redeemed, the judge of probate must disburse the redemption money and it further states that he is entitled to a commission of two and one-half per cent for such services. Neither Section 3117 nor Section 3125 of the 1923 Code provides for payment of any fee to the Probate Judge for performing the services stated in the last part of Section 3125 of the 1923 Code.

Statutes allowing fees to public officers for services performed by them must be strictly construed. The cases cited below uphold this principle:

59 Alabama Reports 130, ex rel Pollard v. Brewer.

"Those who accept public offices which require them to render services to the state, must take the offices cum onere. The rendition of

such service is gratuitous, unless by express statutory provision compensation is fixed, and an express liability for its payment imposed on the state."

213 Alabama Reports 289, McElderry v. Abercrombie.

"He, who accepts public office, takes it cum onere, and can receive only such salary as is authorized by law."

I advise you that in view of the fact that the law does not provide that Probate Judges shall receive the fees prescribed in Section 3117 of the 1923 Code for performing the services required of them in the last part of Section 3125 of said Code, the Probate Judges of the State are not entitled to said fees.

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

February 9, 1927.

Hon. C. W. Cunninghame,
Clerk, Jury Commission, Marengo County,
Linden, Alabama.

Dear Sir:

Your favor of January 28th asking an opinion:

Quaere: "If a man holding the position of police or marshal of a town can legally serve as Jury Commissioner."

It seems to me that under Section 8581 of the Code there can be no doubt that a person holding the office of town marshal under any municipality of the State of Alabama cannot hold, at one and the same time, the office of Jury Commissioner. This section reads in part as follows:

"No person, except as otherwise provided, shall be eligible to be appointed or to hold office as jury commissioner or clerk of a commission who holds any office under the federal, state, county, or municipal governments, nor who is a deputy or clerk, assistant clerk, or employee of any such offices, nor who is or becomes employed by any person, or corporation, who is a party to any suit triable by juries, pending in any state court of record in the county." * * *

I am of the opinion that anyone holding a commission from the Governor accepts an appointment or election to the office of marshal or police of a municipality, he by this act vacates the office of Jury Commissioner eo. instanter.

In the case of Hooper v. the State, ex rel Fox, our Supreme Court discusses the question at length and while the exact question which we have here was not up for review, yet the opinion of the majority of the court showed clearly the strict construction which it is placing upon the provisions of this section.

Hooper v. State, ex rel Fox, 206 Ala. 371.

So I am of the opinion that anyone holding office of Jury Commissioner of the county accepts the appointment or election and becomes police or marshal of any municipality, he vacates the former.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 9, 1927.

Mr. McK. Lovett,
Tax Collector, Winston County,
Double Springs, Alabama.

Dear Sir:

This acknowledges receipt of your letter of February 8th. In reply will say that assessment against the capital stock of a corporation is primarily an assessment against the individual stockholders of such stock, and the corporation itself would not have authority to pay such tax unless there were a surplus out of which such taxes could be paid. In other words, while the bank has authority to pay the taxes assessed against the stock belonging to the stockholders provided there is money which might be distributed to the stockholders as dividends out of which to pay such taxes, but unless there is such surplus the corporation has no authority to take part of its capital which could not be distributed as dividend and pay such taxes.

Of course, there is a different ruling in regard to taxes assessed against the property belonging to the bank. This is not an assessment against the stockholders at all, and can be made out of any property belonging to the bank. It is my opinion that the Receiver of the First National Bank of Haleyville, Alabama, is correct in his position in refusing to pay the assessment against the shares of stock in said bank, but must pay all assessments against the property of the bank, whether real or personal.

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

February 9, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

I have your favor of February 3, 1927, requesting an opinion on the latter clause in Section 3750 of the Code.

I notice that you say the feed bill of the Sheriff of Jefferson County for the month of December, 1926, shows that seven prisoners escaped jail during that month, and you deducted the amount due for these prisoners that escaped, from the food bill because they had not been recaptured.

I note further that you say the Sheriff is claiming that the latter clause of Section 3750 does not apply to him due to the fact that he is on a salary and not a fees basis. The latter clause which controls this matter reads as follows:

> "No sheriff must be paid out of the State Treasury any fee or allowance whatever, on account of any prisoner who has escaped from his custody."

In my research and in my imagination, I have tried to get at the reason for this contention and have been unable to find any, or any intimation that would sustain the Sheriff in this contention. I note the above quotation from Section 3750, supra, the direct provision "no Sheriff must be paid out of the State Treasury any fee or allowance whatever." * * * I am of the opinion and so hold that this clause in the Section above quoted applies to all Sheriffs alike, whether they be on fee basis or whether they be on salary.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 9, 1927.

Hon. Woolsey Finnell,
Highway Director,
Capitol.
Dear Sir:

In re: Alabama Project; Cullman County.

I have your letter of the 8th, which is in part as follows:

> "Advertisement was prepared asking for bids to be received for the construction of the above named project on December 7, 1926. One copy of the advertisement was sent to the Montgomery Advertiser and published, the other copy was mailed to The Cullman Tribune and we are advised same was not received by them or published in Cullman County. Without knowing this, bids were received in Montgomery December 7, 1926, according to advertisement and contract awarded to The Texas Co. Bond was made by the Fidelity and Deposit Co. of Md., contract signed by the State Highway Commission and approved by the Governor January 4, 1927.
>
> "I will thank you to advise me if the contract as awarded to The Texas Co. is valid, or if this contract will have to be withdrawn and readvertised."

The General Acts of Alabama of 1923, page 376, Section 13, among other things, provides the following:

> "Whenever it is proposed to do such work by contract and the estimated cost of such work exceeds five thousand dollars, the State Highway Department shall advertise for bids for at least thirty days in advance of the award of the contract in a newspaper published in the

city of Montgomery and in a newspaper published in the county where the work is to be done, and in any other newspaper or periodical if the Department deems such other publication necessary, and shall receive bids for all or a part of said work and let the contract to the lowest responsible bidder."

Whether provisions of an act are directory or mandatory must be determined by consideration of the subject-matter. Such was held to be the law in this state in the case which is cited below:

96 So. Reporter, page 778 Citizens Bank and Security Company v. Commissioners Court of DeKalb County.

"Whether provisions of an act are directory or mandatory must be determined by consideration of the subject-matter and the relations of each provision to the general object, so as to arrive at the true legislative intent."

It is my opinion that the direction of Section 13 of the 1923 Acts as to the manner of advertising for bids is mandatory, because the act clearly shows that the legislature intended that the method of advertising prescribed by the act should be strictly followed.

You did not state in your letter that the estimated cost of the work, specified in the Texas Company contract exceeds $5,000.00. I presume, however, that the estimated cost is in excess of this amount. I advise you that if the estimated cost does in fact exceed $5,000.00, the contract awarded to the Texas Company is not valid because advertisement for bids was not published in a newspaper in the county in which the work is to be done, and it will be necessary for you to withdraw such contract and re-advertise for bids.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 9, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

Your favor of February 4, asking an opinion on a proposed Act of the Legislature, the purpose of which is to exempt certain cotton mills or enterprises of like kind from the payment of taxes, has been received, and you state therein in substance your inquiry, as follow:

"Tax Collector of Barbour County in which he asks to be advised whether in case a bill to be introduced in the Legislature should become an act providing for relief for cotton mills or enterprises of like kind from paying taxes regularly assessed against them for county purposes, general and special, and for special school taxes, county wide and district, wherein Commissioner's Courts or Boards of Revenue had without

authority of law undertaken to exempt such concerns from paying such taxes, the fact of such unauthorized action on the part of said County governing body being so determined by advice in opinion rendered by the Attorney General's office, such act would be constitutional."

Section 104 of the Constitution of Alabama, the caption of which is as follows:

"The Legislature shall not pass a special, private, or local law in any of the following cases."

Paragraph 9 of said section reads as follows:

"Exempting any individual, private corporation, or association from the operation of any general law."

Paragraph 15 of this Section is as follows:

"Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extention of existing municipal indebtedness created prior to the ratification of the constitution of eighteen hundred and seventy-five."

In the first place, it is clear from the above, this bill would have to be a general bill, if under this section of the Constitution, no special act or local law can be passed effecting the subjects enumerated in this section, which paragraphs number from one to thirty-one, both inclusive.

Section 100 of the Constitution of Alabama reads as follows:

"No obligation or liability of any person, association, or corporation held or owned by this state, or by any county or other municipality thereof, shall ever be remitted, released, or postponed, or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims."

As I understand it the proposed bill seeks to relieve said cotton mills or like industries in Barbour County from the payment of certain taxes, and among them, a special school tax, county-wide and district. By the operation of our law as to taxes, and as I understand it, the tax year begins October 1st of each year and the taxes due for the current year are due and payable on this date and become delinquent on January 1st following. The assessment for the taxes for the succeeding tax year begins on the same date, so it naturally follows that the taxes for the year 1926 were due and payable on October 1, 1926, and if not paid, became delinquent on January 1st, 1927.

These taxes, therefore, are a fixed obligation due the county, state and districts, and any law attempting to relieve any individual, association or corporation from the payment of same, would, in my opinion, fall under the ban and be repugnant to Section 100 of the Constitution and be void.

Section 100, Constitution of Alabama.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 10, 1927.

Hon. W. G. Rains,
Solicitor, 16th Judicial Circuit,
Gadsden, Alabama.

Dear Sir:

Your letter of January 21st, has been received and contents carefully noted. My conception of the situation is as follows:

You have appointed a party to act as your Deputy Solicitor in Etowah County. This party, since becoming of age, has been a qualified voter of, and retained his citizenship in the State of Alabama. He has been a resident of Etowah County, Alabama, for a period of less than twelve months at the time of his appointment.

Assuming the statement of facts to be correct:

Quaere: Is a Deputy Solicitor, as created by Section 5522 of the Code of Alabama, such an officer as that he must possess the qualifications enumerated in Section 2575 of the Code, to be eligible for appointment.

A Deputy Solicitor appointed by you by authority of Section 5522 of the Code of Alabama is a county officer.

State, ex rel, Black, 199 Ala.
Lacy v. State, 13 Ala. App. 227.
Shelby v. Alcorn, 36 Miss. 273.
Montgomery v. State, 107 Ala. 381.
3 Maine Reports 481.
Spelling on Extra, Relief Vol. 2, Section 1780.
Ex Rel, State v. Sayre, 118 Ala. 31.

A study of Section 5522 of the Code will show that a Deputy Solicitor appointed by you under authority of that section is a county officer for the following reasons:

(1) He is clothed by statute with a certain portion of the sovereign powers of the State.

(2) In the exercise of those powers as your deputy, he is confined to the county where he is to act as a deputy for you.

Under Section 2575 of the Code, it is stated that certain persons are ineligible, and disqualified for holding office under the authority of this State and amongst those who are thus ineligible and disqualified are:

(1) Those who are not qualified electors, **except as otherwise expressly provided.**

(2) Those who have not been inhabitants of the State, County, District, or Circuit for the period required by the Constitution and laws of the State.

That such a deputy is an officer has been shown above. That he is an officer "under the authority of this State cannot be disputed, because he holds

his office by authority of an Act of the Legislature of this State and he performs certain state functions.

(23 A. & E. Encyc. of Law, page 327.)

The question seems to resolve itself into this:

Does Section 2575 of the Code, which prescribes the qualifications of the county officer or officers under the authority of this State, contemplate an office which is not elective, or one where the statute creating same is silent as to qualifications of the appointee.

Section 2575 of the Code must be read and construed in pari materia with Section 361 of the Code.

One must be a qualified elector of the State to hold any office under the authority of the State. He must also have been a resident of the State, County, or District, for the period required by the Constitution and laws of this State. The question presents itself, as to what laws or what constitutional provisions are within the contemplation of the statute. Are the statutory and consitutional provisions setting forth the qualifications for the particular office the provisions referred to, or must this be construed to mean also be an elector of the County or District according to the constitutional and statutory provision defining how long one must have resided within the County before he is a qualified elector and eligible to hold office in the county?

Section 361 of the Code provides one must have resided in the County one year before he is an elector of the county.

You will note that by subdivision one of the Section 2575 of the Code, no person is eligible to and qualified for holding an office under the authority of this State unless he be a qualified elector, or unless it may have been expressly provided that for that particular office he need not be a qualified elector. An investigation will disclose that there is no express provision in the Constitution or statutes of this State providing that a Deputy Solicitor appointed by you need not be a qualified elector.

From a full consideration of the matter, I am, therefore, of the opinion that a Deputy Solicitor appointed by you by authority of Section 3522 of the Code of Alabama must be a qualified elector of the State and County in which he is to act before he is eligible to hold such an office.

Trusting this answers your inquiry, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 15, 1927.

Hon. George B. McDonald,
Judge of Probate,
Rockford, Alabama.

Dear Judge:

Your letter of February 3rd, has been received. In it you request an official opinion as to whether a Representative in the Legislature of Alabama can at one and the same time hold the office of Deputy Solicitor in the county from which he was elected to the Legislature, he being appointed to the office of Deputy Solicitor by the Circuit Solicitor of the county in which he holds office.

You state that you request an opinion of me for the reason that as Judge of Probate of Coosa County and ex-officio chairman of the Board of Commissioners, who are required to issue a warrant to the Deputy Solicitor whom you have in mind.

Section 5522 of the Code of Alabama provides for the appointment by the Circuit Solicitor of a Deputy Solicitor in each county of his circuit and prescribes the duties of such Deputy Solicitor.

Section 5523 of the Code of Alabama fixes the salary of a Deputy Solicitor and makes said salary payable out of the County Treasury.

Under Section 279 of the Constitution of Alabama, if such Deputy Solicitor be considered an officer, he must, before entering upon the execution of the duties of his office take the oath of office therein prescribed.

Section 280 of the Constitution prohibits any person holding "two offices of profit at one and the same time under this state," with the exception of Justices of the Peace, Constables, Notaries Public, and Commissioners of Deeds, and unless otherwise provided in the Constitution.

The rule at common law was that a person could not at one and the same time hold two **incompatible** public offices. However, at common law, it is to be noted that there was no inhibition against the holding by the same person of **more than one office,** provided they were not **incompatible** with each other.

(22 R. C. L., page 412, and cases cited.)

Our Constitution establishes a more severe standard of incompatibility by prohibiting a person from holding more than one office of profit under this state at one and the same time. Another form of restriction which is embedded in our Constitution is that set forth in Section 43 thereof which prohibits any one of the three departments of government from exercising the powers of another department.

(22 R. C. L. Public Officers, paragraph 54-58, et seq.)

Now in order to answer your question it is necessary to determine:

1. Is a Deputy Solicitor an officer ?
2. Is a Deputy Solicitor an officer under this state?
3. If so, is the office of Deputy Solicitor an office of profit?
4. Is a member of the Legislature an officer?
5. Is he an officer under this state?
6. If so, is it an office of profit under this state?

If it is determined that a Deputy Solicitor holds an office of profit under this state and that a member of the Legislature holds an office of profit under this state, in view of Section 280 of the Constitution, which, in a measure, changes the common law rule, set forth above, it is unnecessary to determine whether the two offices are incompatible, for Section 280 of the Constitution is not aimed solely at incompatible offices.

What is an office under this state? This has been answered by the Supreme Court of Alabama in

Montgomery v. State, 107 Ala. 372.

In that case the court held that the office of Judge of Police Court of Birmingham, is a civil office of profit **under this state.** It was there stated, quoting from another case, that the term "office" implies a delegation of a portion of the sovereign powers and the possession of it by the person filling the office; and the exercise of such powers within legal limits, constitutes the correct discharge of the duties of such office. The court distinguished an office from an employment by stating that an employment had none of the above distinguishing features.

In the same case the court quoted with approval (page 382) from a Missouri decision in which it was stated:

> "In a certain possible acceptation the words **civil office under this state,** might possibly be interpreted **state offices** in the sense of participating directly in the administration of the state government as such; but they are none the less civil officers under this state because their functions are confined to the **local administration.** The offices are created and the officers are appointed and their powers given, and their duties defined, and their salaries fixed, directly by Act of the Legislature. They exercise a share of the powers of civil government, and their authority **comes directly from the state.** They are to be considered as much civil officers under this state as the Judge of a Court, or the Mayor of a City. They would be none the less so, if appointed by the Mayor; for they would still derive all their powers from the Act **creating the office.** The mode of appointment is not material."

Now it is to be noted that one is none the less an officer under this state within the provisions of Section 280 of the Constitution because he may be removed at the pleasure of the appointing power.

In the case cited above, the court quoted from **Spelling** on **Extra. Relief,** Volume 2, paragraph 1780, as to the three principal tests for determining whether one performing duties of a public officer in the sense of subjecting his encumbency or employment **to a quo warranto proceeding.** My judgment is, from a study of that case that, in order that, a public officer may be subjected to **quo warranto proceedings** the tenure of his office must be fixed and permanent for a definite period fixed by law. However, in the instant case we are not interested in **quo warranto proceedings** but mainly in whether or not a Deputy Solicitor holds an **office** of **profit under** this **state.**

In Jackson v. Sherrod. 92 So. 481, 485, Mr. Justice Miller made the statement that,

"The Deputy Solicitor of Lawrence County is an officer holding a civil office of profit in the county by appointment of the Circuit Solicitor of the circuit."

In Ward v. State, 82 So. 662, Chief Justice Anderson rendering the opinion for the court, held that a Deputy Sheriff **paid by the Sheriff out of private** funds and removable at his will, was not an officer within the terms of Section 280 of the Constitution, but the Justice further stated:

"As such he was not paid by the state or county from public funds and was not therefore within the terms of Section 280 of the Constitution, which prohibits holding two officers of profit * * *. Of course, to a certain extent and purpose a Deputy Sheriff is an officer **within certain** provisions of the law, such as resisting an officer, etc., but he is not such an officers as is dealt with by Section 280 of the Constitution, **unless** perhaps, he be a Deputy in Montgomery **or such other county as compensate the Deputy Sheriff from the public funds."**

The case of Kemp v. Wilson, 84 So. 636, relating to a Deputy Sheriff, must be gauged in the light of the expression of Chief Justice Anderson in the case of Ward v. State.

Attention is invited to the case of the American Bonding Company v. New York, etc., 66 So. 847, where it was held that the Harbor Master of Mobile and his deputies are **"officers** of the **State."**

I would also invite your attention to the case of State, ex rel, Gaston v. Black, 199 Ala. 321, 336, where it was stated,

"There is, therefore, this difference between the assistants which the Circuit Solicitor appoints, and those appointed by the County Solicitor: **the former are made officers,** while the latter are not; * * *

(See also Mann v. Darden, 171 Ala., 148.)

In the case of Scott v. Strobach, 49 Ala. 477, it was held that one person could not at the same time hold the **incompatible** offices of Sheriff and member of the General Assembly. However, it occurs to me that the decision in this case was based largely on the **incompatibility** of the offices. Your attention is invited to Lacy v. State, 13 Ala. App. 212, in which it is stated that the Supreme Court has not laid down any general rule to cover in determining what is required to constitute a **state** officer, or an officer **of the state.**

"Its holdings in this respect are that, where one derives his authority directly from the state by legislative enactment, and the duties imposed by the enactment are of a public character, and the terms and compensation are definitely fixed, such person is an officer of the state." (Page 226).

The **term of office** need not be **fixed** to make the person an officer within the meaning of Section 280 of the Constitution.

(Mechom, paragraph 1—cited with approval in the above case.)

But such is only necessary where quo warranto proceedings are to be instituted.

(Spelling, Extra. Relief.)

I find that on January 26, 1926, the Attorney General ruled, in effect, that a person could not at one and the same time be a member of the County Board of Education and a Registrar, because this would be in violation of Section 280 of the Constitution, inasmuch as both were offices of profit under this state.

(Report of the Attorney General, 1924-1926, page 294.)

On July 13, 1926, I find that the Attorney General ruled that a member of the Legislature could not at the same time be a member of the Board of Dental Examiners of Alabama, because both were offices of profit under this state and to hold both at the same time would be in violation of Section 280 of the Constitution. In that opinion, the Attorney General cited the case of Shelby v. Alcorn, 36 Miss. 273, and he distinguishes that case and the case of Montgomery v. State (cited supra) from State v. Sanders, 187 Ala. 79, and Harrington v. State, 76 So. 422.

In July, 1926, I find that the Attorney General ruled (citing Shepherd v. Sartain, 185 Ala. 448) that a representative in the Legislature from Washington County, Alabama, who accepted an appointment as Sheriff of Washington County ipso facto vacated the office of representative. The following was quoted from the case cited:

> "If the holding of two offices by the same person, at the same time, is inhibited by the Constitution or the Statute, a forbidden incompatibility is created similar in its effect to that of the common law, and as in the case of the latter, it is well settled by an overwhelming array of authority that the acceptance of a second office of the kind prohibited operates, ipso facto, to absolutely vacate the first office. * * *. It is the acceptance and qualification for the second office which vacates the first."
>
> Opinions, Attorney General, 1926, page 322, office file.

A representative in the Legislature has been held to be a state officer.

> Ricker's Petition, 66 N. H. 207.
> 24 L. R. A. 740.
> State v. Stanley, 66 N. C. 59.
> 8 Am. Sec. 488.
> 22 R. C. L. "Public Officers."
> Par 19, 314 notes.

It has also been held (Opinions, Attorney General, July 23, 1926, page 334, office file) that members of the Board of Revenue of the county, the chief Deputy Sheriff, Sheriffs, and members of the County Board of Education, are ineligible to serve as inspectors, clerks, or returning officers, in a primary election held August 10, 1926, because in violation of Section 280 of the Constitution.

On September 9, 1922, (Opinions, Attorney General, 1922, office file) Hon. Lamar Field, Assistant Attorney General, held that a person who was

Register in Chancery, and later accepted the office of Deputy Solicitor, automatically vacated the office of Register in Chancery, "and that if he should be paid any compensation as Register in Chancery, it would be without legal authority." This opinion was addressed to the Probate Judge of Marengo County and was based on Section 280 of the Constitution, the case of

Jackson v. Sherrod, supra.
Batson v. State, 89 So. 500.
Mann v. Darden, supra.
Shepherd v. Sartain, supra.

In an opinion recently rendered by this office to the Circuit Solicitor at Gadsden, we held that a Deputy Solicitor was an officer under this state and that he had to be a resident of the county in which appointed. I am sending you a copy of this opinion.

From what I have said above, it is my opinion that a Deputy Solicitor appointed by a Circuit Solicitor as provided by the Code sections cited is an officer under this state and that he holds a civil office of profit.

(22 R. C. L., "Public Officers" par. 12, 4, 2.)

I am also of the opinion that a member of the Legislature is an officer under this state and that by reason of the fact that by provisions of the Constitution he is entitled to a definite and fixed amount of pay, to-wit, $4.00 per day, he holds a civil office of profit under this state.

From the letter which you sent to me I am unable to ascertain whether the party whose name you did not mention, was appointed a Deputy Solicitor before he entered upon his duties as a member of the Legislature. By a certain Section of the Constitution it is provided that the term of office of a member of the Legislature begins the day after the general election at which he was elected to that office, but I am sure it is clear to you that his election to the office and the fact that his term began the day after his election would not necessarily mean that he was a member of the Legislature from that date, for the reason that he would have to accept it. In my judgment, his acceptance of that office would be clearly presumed by his coming to Montgomery at the Special Session of 1926, and taking the oath of office prescribed by Section 279 of the Constitution.

Now if he were appointed a Deputy Solicitor before he came to Montgomery and took the oath of office, and if, before he came to Montgomery he accepted his appointment as a Deputy Solicitor, when he came to Montgomery and took the oath of office, he ipso facto vacated his appointment as a Deputy Solicitor and under such circumstances you would not be legally justified in paying him as a Deputy Solicitor for the time after he entered upon his duties as a member of the Legislature.

On the other hand, if he were elected a member of the Legislature and accepted that place by coming to Montgomery in December, 1926, and taking the oath of office and later on, after entering upon his duties as a member of the Legislature, was appointed a Deputy Solicitor, and accepted the appointment, by doing so, he ipso facto, vacated his place as a member of the Legislature and the State Auditor would not be legally justified in issuing a

warrant to pay him for services as a member of the Legislature after his acceptance of appointment as a Deputy Solicitor, but under such circumstances, you would be legally justified in paying him as a Deputy Solicitor.

(22 R. C. L. "Public Officers," Par. 323.)

In the foregoing I have cited the case of Scott v. Strobach, 49 Ala. 477, and I wish to invite your special attention to this case. You will observe from a careful reading of it that Strobach, at the time that he was a member of the General Assembly of Alabama, was elected to the office of Sheriff in his county, and accepted said office. In the majority opinion, written by Justice Brickell, and based on an interpretation of the Constitution of 1868, it was held that the offices of sheriff and member of the General Assembly of Alabama were incompatible. It seems from a reading of this case that the ineligibility of Mr. Strobach to hold both offices at one and the same time was averred to arise from that part of the Constitution relating to the **distribution of the powers of government.**

In the instant case I have not found it necessary to pass on the question of common law incompatibility or inhibition to hold the two offices because belonging to different branches of government a Legislator is a member of the Legislative branch of government. A Deputy Solicitor is a member of the judicial branch **of government.**

It does not appear that the opinion of the court in anywise in the Strobach case turned upon a consideration of such a provision as is set forth in Section 280 of our present Constitution. You will observe also that on page 485 of the report containing this case, reference was made by the Court to the common law rule as to holding incompatible offices, and in connection with the statement made by Justice Brickell in the majority opinion of the Court, I desire to invite your particular attention to the following:

> "The acceptance of the second office was an absolute determination of the original office leaving **no shadow of title** in the original possessor so that neither a motion nor quo warranto was necessary before another could be appointed or elected."

Now it is true that the general rule is that a de facto officer may draw compensation for services rendered as a de facto officer, but there are various limitations on this rule, and in general it seems to be the weight of authority that for a de facto officer to possess the right to compensation for services rendered as such de facto officer he must operate under **color of title.** As shown above, by the statement quoted from the majority opinion of the Court in Scott v. Strobach, where a person holding one office of profit under the state, accepts another office of profit under the state, which is incompatible therewith, he **ipso facto,** vacates the first office and has left **"no shadow of title"** to the first office. It would occur to me, therefore, that since he has **no shadow of title** to the first office, he could not draw compensation for services in an office to which he has not even the "shadow of a title."

Now as pointed out by Justice Brickell, in the case above cited, the election of Mr. Strobach to the office of Sheriff did not fill that office, nor did it vacate his seat in the General Assembly. So also in the matter which we have under consideration, the appointment of the party you have in mind

to the office of Deputy Solicitor did not fill that office, nor did it vacate his seat in the Legislature. He had to accept the office of Deputy Solicitor tendered to him and whether or not he had accepted it might be determined by his taking the oath of office as Deputy Solicitor, or entering upon the duties thereof. It is true that the Legislature is the judge of the qualifications of its members, and in this connection I quote again from the case of Scott v. Strobach:

> "As has been argued, courts may be, and doubtless are powerless to enforce this renunciation. So they would have been powerless to enforce his resignation, or to enforce the exclusion from the General Assembly of any member who has not the constitutional qualifications, but the constitution is committed to the keeping of the General Assembly as well as to the care of the Courts, and as they fail or falter in their duty the people have more availing remedies than any dependent on judicial proceedings."

From the quoted statement, it seems clear that the courts might be powerless to exclude one from the Legislature who by an act of his own had set himself at variance to the Constitution by accepting another office of profit under the State, but I do not interpret this to mean that because the Legislature is the exclusive judge of the qualifications of its members, either you or the State Auditor or both of you must continue to pay such a person public money in violation of the spirit of and the letter of the organic law. I think that the spirit of Section 280 of the Constitution is that no one can at the same time draw profit or compensation for two offices under this state. The inhibition was aimed not only at dual office holding but dual salaries or compensation for dual offices, regardless of common law incompatibility. The **office** and the **profit** in the two cases were inseparable. At common law **incompatibility** alone is sufficient, regardless of whether the offices are **lucrative** or not.

(See Mechem on Public Officers. Para. 427, 429, 54 and 13.)

Again, I wish to call your attention to the fact that, as stated above, because the Deputy Solicitor is removable at the will of the Circuit Solicitor makes him none the less a public officer. (Mechem, para. 8.)

Trusting that the above answers your inquiry fully, and with kindest personal regards, I am

Cordially yours,
CHARLIE C. McCALL,
Attorney General.

February 15, 1927.

Mr. J. W. Miller,
Justice of the Peace,
Ozark, Alabama.

Dear Sir:

Your favor of February 14th requesting opinion of this office relative to the following matter, has been received.

> "When a case has been continued and a witness has proven his attendance and has presented his certificate of attendance to the party summoning him and payment is refused then before the next term of the Court they resummons him can they force him to attend or could they support a fine for default against the witness for failure to attend."

Section 7228 of the Code of 1923 is of long standing. The "demand" portion of this section applies to several cases only. My opinion is, when a party has summoned any witness to testify in his behalf in any proceeding and the cause is continued or not tried for any reason the party or parties attending in obeyance to said summons may after said continuance prove his attendance for the term, and after receiving his certificate showing the amount charged by the clerk, may demand of the party summoning him the payment of such certificate, and if the party at whose instance he so attended, fails to pay the amount as shown by such certificate of attendance, he need not appear again as a witness in said cause until the fees are paid.

However, I would suggest that the party holding the certificate and making the demand, call to the attention of the presiding Judge or Justice, the facts so as not to cause the Court to continue the cause on account of his absence, or render a forfeiture against him for failing to attend.

This may be done, in my opinion, either in person or by letter.

With kindest personal regards, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 15, 1927.

Hon. R. E. Tidwell,
Superintendent of Education,
Montgomery, Alabama.

Dear Sir:

Your letter of February 10th, with papers attached, has been received.

It appears from the correspondence that on November 18, 1926, the city council of Ozark, Alabama, adopted a motion requesting the resignation of certain members of the city school board, and on February 3rd, 1927, the city council adopted a motion declaring certain vacancies to exist on the school board of said city.

You request my opinion as to whether or not the city council of Ozark acted within the scope of its legal authority in vacating, or attempting to vacate, the terms of office of three members of the Board of Education of said city.

Your attention is invited to Section 156 of the School Code of Alabama of 1924, providing for the election by the city council of the members of the City Board of Education. I also invite your attention to paragraph 155 of said Code, which lists certain persons as being ineligible for membership on the city board of education.

There is nothing in the school code as compiled by Judge Mayfield, stating how the members of a city board of education may be removed from office.

However, a reading of Sections 1888, 1889, 1890 of the Code of Alabama, shows that the members of a city board of education, appointed by authority of Section 156 of the School Code, may be removed from office for the reasons therein stated and in the manner therein prescribed.

From your letter, I am unable to ascertain whether or not the provisions of the foregoing sections of the Code of Alabama have been complied with, In my judgment, there should be strict compliance with said sections in order that there may be a legal removal of the members of the said city board of education.

Trusting that this answers your inquiry, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 16, 1927.

Hon. L. H. Reynolds,
Judge of Probate,
Clanton, Alabama.

Dear Sir:

I have your letter of the 12th, in which you state that the managers of the Alabama Sportsman, a monthly periodical, have requested the county through the Commissioners Court to contribute a part of the expense of publication of the magazine and you requested an opinion as to whether or not the Commissioners Court would be legally authorized to contribute a reasonable amount to the enterprise to advertise your county.

It is my opinion that the Commissioners Court has the authority to make such contribution, because Section 6755 of the 1923 Code of Alabama, provides for such expenditure. (6755, sub. 23.)

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

February 16, 1927.

Clerk of Inferior Court of Autauga County,
Prattville, Alabama.

Dear Sir:

Your favor of February 9th asking opinion as to how you, as Clerk of the Inferior Court of Autauga County shall be paid your fees arising in cases where the state fails, has been recevied.

The Act creating the Autauga Inferior Court, Local Acts, 1923, page 244, is silent as to how the clerk of this court is to receive his fees in cases where the state fails, so we are compelled to look to the general statutes in the Code regulating matters of this character.

You will find Sections 4038, 4039, 4040, 4041 and 4042 of the Code have reference to the fine and forfeiture fund of the various counties.

Section 4039, which is as follows:

> "Cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted and have been proven insolvent by the return of executions 'no property found,' or in cases in which the state enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant."

in my opinion settles the question for you.

I am of the opinion that under the conditions therein enumerated you would have a claim against the fine and forfeiture fund for your fees.

Section 4039 Code, 197 Ala. 293, 72 So. 536, 180 Ala. 511.

When I can serve you further command me, I will only be too glad to do it.

With kindest personal regards and best wishes, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Haynes:AKB
February 16, 1927.

Mr. R. E. Jones,
Sheriff, Butler County,
Greenville, Alabama.

Dear Sir:

Your favor of February 2nd asking opinion as to the employment of guards for the purpose of transferring prisoners from Butler County to the jail in Montgomery County, which removal has been ordered by the jail inspectors of the State, has been received.

You will note that under Section 4861 of the Code of Alabama, 1923, that the inspector of jails and poorhouses has the arbitrary powers to say when a jail or prison, state or municipal, is unsafe and unsanitary and can, if he

sees fit, require the removal of all prisoners to the jail of another county or to the state prison and designate to what county they shall be so removed and the section above referred to provides that in case of removals for any cause designated in said section, the county or city shall pay the expenses of the removal, but this section is silent as to how it shall be paid and the amount to be provided.

You will note that under Section 3741 of the Code of 1923, a schedule of fees, charges and commissions that the various sheriffs of the state shall be entitled to in the performance of their various duties.

You will find by examining this section, on page 199 of the Code, the last paragraph which reads as follows:

> "For removing any prisoner in cases where there is no jail in the county in which the offense is committed, or the jail therein is insecure, to the jail of another county, and for returning him to the jail of the county from which he was removed or to court for trial, three dollars for himself or his deputy acting in his stead, and two dollars for each guard for each day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy, and guard or guards, and prisoner or prisoners, while on the trip, by the nearest route usually traveled between the points from and to which such removal is made, to be taxed against, and paid by such prisoner, on conviction, or, if he is insolvent, or is acquitted, by the county in which the offense was committed; but in no case shall the county to which such prisoner was removed be liable for such costs or fees."

This paragraph provides that the sheriff is entitled to "three dollars for himself or his deputy, acting in his stead, and two dollars for each guard for every day they are respectively engaged in such removal, together with the actual necessary traveling expenses of himself or deputy and guard or guards and prisoner or prisoners while on the trip by the nearest route usually traveled between the two points from and to which said removal is made."

This shall be paid by such prisoner on conviction, or if he is insolvent or is acquitted, by the county in which the offense was committed.

While this section applies in its strongest sense to the removal of prisoners under conditions pointed out in the section, yet I believe that this is intended also to apply to those defendants who are arrested during the time that the jail is under the ban of the inspector and at the time when the cause for the removal shall end and the prisoner's return.

Of course, if you had two defendants to be brought to the county jail of Montgomery and you only needed your deputy to bring them, you would not be justified in hiring a guard or guards. This is a matter that would have to be decided, in my opinion, by your presiding judge, and would have to be regulated on proof from you to him.

With kindest personal regard, I am,

Very truly yours,

CHARLIE C. McCALL,
Attorney General.

February 17, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

Your letter of February 16th received. You request an opinion of me as to whether or not the Commissioners' Court may legally appropriate money to junior and senior high schools established by the county board of education of your county. You state that you are now appropriating a small amount to the regular county high school.

In answer to your inquiry I beg to advise that, in my opinion, your Commissioners' Court would be without authority of law to appropriate any part of the county funds to the establishment, maintenance or running of junior and senior high schools or other common schools in your county.

There is no authority for such action on the part of your Commissioners' Court contained in the Code of 1923, either expressly or by implication.

Under Section 327 of the School Code, you may appropriate money to the county board of education for the purpose of purchasing rural school libraries in the public schools of your county, as provided by Article 20 of said school code.

Under paragraph 350 of the School Code you may appropriate money to the county board of education for vocational work under certain restrictions set forth in that section.

Under paragraph 407 of the School Code, you may appropriate money to the county board of education for the maintenance and support of county high schools established by the State.

Under paragraph 415 of the School Code, you may appropriate money to the County Board of Education to be used in the construction, improvement, maintenance and support of county high schools established by the state.

In my judgment, the junior and senior high schools mentioned by you belonging to the public school system of the county, are unlike the county high schools which is established by the State and maintained, in part by the state through appropriations and in part by the county Board of Education through apportionment from the special county three mill school tax. I might say that on April 7, 1926, the Attorney General ruled that the Commissioner's Court could not make appropriations from the general funds of the county for the building of rural school buildings. (Opinions of Attorney General 1926, Office File, Vol. I, p. 169.)

I might say further, in this connection, that the county high schools established by the State cannot be maintained by the county Board of Education with any part of the public schools funds apportioned to the county on the basis of the biennial census.

Trusting that this answers your inquiry fully, and assuring you that I am always at your services I am

Respectfully yours,
CHARLIE C. McCALL,
Attorney General.

Note: Rendered under School Code, 1924.

February 17, 1927.

Hon. Huey R. Lee,
Judge of Probate,
Clayton, Alabama.

Dear Sir:

This acknowledges receipt of your favor of February 16th in regard to Building and Loan Associations. In reply would say that Sections 6969 and 6975 have no application to Building and Loan Associations.

The law with reference to Building and Loan Associations is found in Article XVII, Chapter 274, of the Code of 1923. This Article gives us all the law with reference to the incorporation of Building and Loan Associations within this State.

Of course, you are entitled to recording fees such as are provided for in the law with reference to recording such instruments.

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

February 17, 1927.

Hon. W. E. Merrill,
President, Shelby County Board of Revenue,
Columbiana, Alabama.

Dear Sir:

I have yours of the 12th, asking for an opinion as to whether or not the Board of Revenue may legally pay for road machinery, such as tractors, graders, etc., out of the county's share of the gasoline tax.

The Act approved February 10, 1923, imposing an excise tax on persons, corporations, co-partnerships, companies, agencies, or associations engaged in the business of selling or distributing gasoline provides that the proceeds of such excise tax shall be divided between the state and the several counties thereof as follows: One-half of such proceeds shall be paid into the State Treasury to the credit of the general fund, to be used for general state purposes, the other half shall be divided and distributed equally among the sixty-seven counties of the state.

Section 83 of the Act approved August 22, 1923, (page 152, of the 1923 Acts of Alabama) which Act is entitled "In reference to and to further provide for the general revenue of the State of Alabama," provides that the net proceeds of the excise tax on gasoline or other liquid motor fuels in this state prescribed by an Act of the Legislature of Alabama, entitled, an Act, imposing an excise tax on persons, corporations, co-partnerships, companies, or associations engaging in the business of selling or distributing gasoline or other liquid motor fuels in this state which Act was approved February 10, 1923, shall after the first day of October, 1923, next, after the passage of the Act be divided and distributed equally among the sixty-seven counties of the state, to be collected and paid to each of the several counties as provided by the provisions of the Act approved February 10, 1923, imposing an excise tax on gasoline. Said Section 83 of the Act approved August 22, 1923, further provides that all funds derived by the several counties from said tax shall

be expended exclusively for maintenance and repair of roads, highways and bridges in said counties and that the use or expenditure of any of said funds in any other manner or for any other purpose than as provided herein by the governing body of any county or any individual member of said body shall constitute a misdemeanor punishable by a fine of not less than $100.00 nor more than $1,000.00 and by imprisonment in the county jail or at hard labor for the county for not less than one nor more than twelve months.

On January 11, 1923, the Attorney General rendered an opinion to Hon. D. B. Borden, Judge of Probate, of Greensboro, Alabama, on the question of application of funds derived from the excise tax on gasoline, and such opinion contained the following:

> "It will be noted that the authority contained in the Act approved February 10, 1923, to devote such funds to 'construct' highways and bridges, is not contained in the Act approved August 22, 1923. This latter Act limits the use of such funds to purposes of 'maintenance and repair' of highways and bridges. The omission of the power to use such funds to 'construct' highways and bridges was not an oversight on the part of the law-makers, but in my opinion, was done purposely to limit the use of such funds to 'maintenance and repair' of public roads and highways. It follows that while this fund, under the Act approved February 10, 1923, could be used to 'construct' highways and bridges; after the approval of the revenue act approved August 22, 1923, the fund was limited to being used for the purpose of 'repairing and maintaining' public highways and bridges."

You will note that there is a difference in the provisions of the two Acts in that the Act approved February 10, 1923, provides that the county's portion of the funds derived from the tax shall be used for the construction and maintenance of the public highways and bridges in such counties and for no other purpose while, Section 83 provides that the county funds derived from the gasoline tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in the counties.

In view of the above it is my opinion that the Board of Revenue of Shelby County does not have the authority to pay for the road machinery out of the county's share of the gasoline tax unless said machinery is necessary for maintenance and repair.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

February 18, 1927.

Hon. Chester E. Johnson,
State Fire Marshal,
Capitol.

Dear Sir:

Your letter of February 16th, has been received. In it you propound the following questions:

(1) "Has the State Fire Marshal of Alabama authority to appoint persons well known to him to be skilled and competent to act as deputies of the State Fire Marshal Department and to make inspections and investigations of fires of suspicious origin, clothing them with the same powers and authorities as provided in Section 983 of the Political Code of Alabama of 1923 and Section 958 of the same Code, such deputies to serve without compensation from the State?

(2) "Would it be legal under the present statute, as recorded in Chapter 27 of the Political Code of 1923, to expend money derived from the special tax upon insurance companies doing business in the State of Alabama 'for the purpose of maintaining the office of State Fire Marshal and paying expenses incident thereto' to employ deputies and pay them from this fund other than the four deputies specifically provided for in Section 955, Chapter 27, Political Code of 1923?"

The Code of Alabama (Chapter 27, Section 951, et seq.) provides that the Governor may appoint a State Fire Marshal, who takes office beginning with February 2, 1923, for a term of four years and until his successor is appointed and qualified. By Section 952 of said Code, his salary is fixed at $2,500.00 per annum, payable out of the State Fire Marshal Fund. (Later amended.)

By Section 955 of said Code, the State Fire Marshal, with the approval of the Governor, may appoint four deputy fire marshals at a salary of $1,800.00 per annum each. The salary of such deputy fire marshals is payable out of the State Fire Marshal's fund. Under this same Section the State Fire Marshal is authorized to appoint a Chief Clerk, to act as stenographer, and to be clothed with all the powers of Assistant Fire Marshal, who shall receive a salary of $1,200.00 per annum, the appointment to be made with the approval of the Governor.

Under Section 956 of said Code, the actual and necessary expenses of the Fire Marshal, his deputies and assistants, when traveling, or making investigations in the performance of their duties are properly chargeable against the State Fire Marshal Fund.

Under Section 957 of the Code, the Governor, with or without cause, may remove from office the deputies and assistants to the State Fire Marshal, appointed by authority of Section 955 of said Code.

Under Section 958 of said Code, it is provided that certain county officials, as well as the sheriffs of the several counties of the State are by virtue of their offices, assistants to the State Fire Marshal, and subject to his direction in the discharge of duties and obligations imposed upon the State Fire Marshal by the provisions of Chapter 27 of the Political Code of Alabama. (Later amended.)

In this same Section of the Code, it is provided that if there be no such officer as is named in the first sentence of Section 958, in any such city or town, or in the event such city official declines to serve, the State Fire Marshal may appoint in his place an assistant. There seems to be no provision for the State Fire Marshal to appoint anyone to serve in place of the sheriff of any one of the several counties of the State. My judgment is that the assistant, whom the State Fire Marshal may appoint to serve where a city or town official, such as is named in the first sentence of Section 958 of the Code, declines to serve, can exercise no authority beyond the police limits of the city. This is because such assistant is really an officer who substitutes for the city official who has declined to serve.

Section 959 of the Code makes it the duty of the assistants mentioned in Section 958 of the Code, and who are appointed by authority of the latter section, to make certain investigations with regard to fires "occurring in any city or place in this State." However, a city official acting by authority of Section 958 of the Code, or an assistant appointed to act in his stead, where said city official declines to act, would not, in my judgment, have authority or be in duty bound, to go beyond the police limits of the city or town to make investigations with regard to fires. I think the expression "place in this State" refers to the sheriffs of the respective counties, and only then insofar as their ordinary jurisdiction and powers as sheriffs of the respective counties, would extend. In other words, I do not think that an assistant appointed by authority of Section 958 of the Code to act in lieu of a city official would, in contemplation of the law, have any authority to act beyond the police limits of the city where he is to substitute for some city officials.

I find that on January 16, 1920, (Opinions, Attorney General, 1918-20, p. 399), the Attorney General ruled that the chiefs of certain fire departments making reports as required by the provisions of Section 960 of the Code, were entitled to fifty cents for each report of each separate fire reported to your office, where the loss by such fire exceeds the amount of $25.00. My judgment is that where you have appointed an assistant by authority of Section 958 of the Code, who does not receive a salary from the State, such an assistant is entitled to receive fifty cents for each report of each separate fire reported to the State Fire Marshal under the provisions of Section 960 of the Code, provided that the loss by such fire exceeds the amount of $25.00, and that in addition to the fifty cents allowed, the chiefs of the fire departments, appointed by authority of Section 958 are entitled to the sum of fifteen cents per mile for each mile traveled to the place of the fire, providing it be a fire resulting in a loss of over $25.00, and one in which said chief has made a report as required by Section 960 of the Code. I am also of the opinion, that the mayor of each incorporated town or place, appointed by authority of Section 958 of the Code in which no paid fire departments exists, and who makes the report contemplated by Section 960 of the Code, is entitled to fifteen cents per mile for each mile traveled to the place of a fire, resulting in a loss of over $25.00.

It is also my judgment that fire department chiefs or mayors, such as mentioned above, who make investigations as contemplated by Chapter 27 of the Code, are entitled to not more than $3.00 per day for each day's services spent in making such investigations in addition to the allowances above

mentioned. All such compensation and traveling expenses mentioned, are payable out of the State Fire Marshal's fund under the conditions specified.

In Section 980 of the Code, there is reference to "any other authorized citizen without the limits of an incorporated city or place." I take this to refer to the sheriff, inasmuch as there is, in the preceding Section of said Chapter 27, no mention of the authority on the part of the State Fire Marshal to appoint, as assistants, citizens outside of the limits of incorporated cities or places, other than possibly the sheriff of the respective counties of the State. In other words, my judgment is that the quoted expression means that the sheriffs of the several counties of the State, who discharge the duties contemplated are entitled to fifteen cents per mile for each mile traveled to the place of a fire. You will also observe that the fifteen cents is allowed to the parties mentioned "for each mile traveled **to the place of fire."** This, in my judgment, would not permit parties mentioned in Section 980 to put in a mileage claim for more miles than to the place of the fire. It would not allow mileage **to and from** the place of fire.

Section 983 of the Code permits the State Fire Marshal to appoint "any person or persons" possessing certain qualifications, as **deputy inspectors** in the State Fire Marshal's Department. These deputy inspectors are in addition to the parties mentioned in Section 958 of the Code, and, under authority of Section 983 of the Code, are possessed of "all the powers of other deputies and assistants to enter any buildings or premises to make an inspection of such buildings and their contents, and to report such inspections in writing to the State Fire Marshal's office, "where they find faulty or hazardous conditions."

You will observe that the authority of such additional inspectors is more limited that the authority of the persons mentioned in Sections 955 and 958 of the Code. They have authority only to make certain **inspections** and to report on those inspections, and by the last sentence of Section 983 of the Code, they are to serve "without compensation." A careful reading of the whole of Chapter 27 of the Political Code of Alabama, leads me to the conclusion that the additional inspectors authorized are not entitled to any of the fees, allowances, or mileage expenses mentioned in Section 980 of said Code.

I am of the opinion that there is no authority of law for you to appoint **deputy fire marshals** generally, and to clothe them with authority such as set forth in Section 958 of the Code, for the persons mentioned in said latter section. There is no doubt but that you may appoint **deputy inspectors,** to serve without compensation, and they have the authority to do all things mentioned in Section 983 of the Code.

I am also of the opinion that there is no authority of law for you to employ more than the four deputy fire marshals mentioned in Section 955 of the Code, and pay them from the State Fire Marshal's Fund.

Trusting that this answers your inquiry fully, and with personal regards, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 21, 1927.

Dr. R. E. Tidwell,
State Superintendent of Education,
Capitol.

Dear Sir:

It has come to my attention that in many counties of the State a form of contract for the erection, repair and equipment of school buildings is being used through county boards of education in the following manner:

A building committee is appointed and the form of contract is turned over to the building committee to write up and execute the contract with the contractor.

I wish to invite your attention to the provisions of the School Code which clearly contemplate that all contracts relating to the public schools of a county be entered into by the County Board of Education through its executive officer with any parties, teachers or otherwise, who are to render services for which county school funds are obligated.

I would suggest that a copy of this opinion be transmitted to the various officials affected.

With kindest personal regards and best wishes, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 21, 1927.

Hon. M. H. Killingsworth,
County Superintendent of Education,
Linden, Alabama.

Dear Sir:

Your letter of February 15th, has been received. In it you give the following statement of facts:

1. "In January 4, 1923, the amount of $900.00 was borrowed from the First National Bank of Linden. A note signed by the Magnolia trustees and one other man was given to secure the loan. No mention was made that the persons signing the note were school trustees, nor that the money was to be used for school purposes. We are told that the trustees used this money to pay off some indebtedness on the main school building at Magnolia, built in 1922. This is most probably true.

2. "On August 10, 1923, the amount of $2,592.50 was borrowed from the Marengo County Bank of Linden. A note, signed by the trustees of Magnolia School and nine other persons, was given to secure this loan. Again no mention was made that any of the persons signing the note were trustees, nor that the money was to be used for school purposes. We are told that the money in question was used to get State aid in the erection of a vocational building at Magnolia. We feel certain that this is true, as a check for $2,400.00 was turned over to the County Board of Education, along with an application for State aid to erect a building, on August 17, 1923. State aid was secured and the building erected. However, the County Board did not know that the money was borrowed.

There is no record that the Board of Education had any knowledge of the first loan either."

In view of the above statement of facts you propound the following questions:

Under the conditions set out on the foregoing page the County Board of Education would like to know:

"1. Whether it is legal for the County Board of Education to pay the principal or interest, or both, on the two debts.

"2. If it is legal for the County Board of Education to pay the debts, can they be paid out of the local District Tax Fund of Magnolia District?

"3. If it is legal for the County Board to pay the debts, to whom should the money be paid, the banks or the trustees?"

A County Board of Education, under paragraph 106 of the School Code is authorized to sue and contract, "all contracts to be made after resolutions have been adopted by the Board and spread upon the minutes."

Under paragraph 107 of the School Code provision is made for the appointment of school trustees, and in that same section as well as Section 141 et seq., the duties, powers and functions of the school trustees are demarked.

You will observe, from a careful reading of the educational laws of Alabama that no power rests in school trustees individually or collectively to obligate public school funds which are in the hands of the County Treasurer of School Funds. It is my opinion that the County Board of Education, through its County Superintendent of Education, is the only authority controlling the schools of the county which is empowered to obligate school funds which are in the county school treasury.

Under an Act approved August 21, 1923, (paragraph 111 of the School Code) the County Board of Education may appropriate and use any district three mill tax that has been or many hereafter be voted in any school district to pay and discharge any **obligations** or **debts** which may have been or hereafter are, created to build, furnish or equip a public school building for said school district, or the County Board of Education may appropriate and use any such district tax to reimburse any person or corporation who has or may hereafter advance money for the purpose of building, furnishing or equipping a public school building for such a district.

The above mentioned section of the School Code must be interpreted in the light of the purpose for which a district tax has been voted. In other words, if a district tax has been voted for the purpose of lengthening the terms of public schools in said district and for no other purpose, it would be apparent that the district tax of such a district could not be used for the purposes mentioned in Section 111 of the School Code, because when a district tax is voted for a particular purpose and particular use it must be devoted exclusively to that particular purpose and use.

Furthermore, it is my opinion, after a careful reading of the School Code, and especially all provisions thereof which had become law prior to the adoption of the Act approved August 21, 1923, above mentioned, that paragraph 111 of the School Code was not intended to authorize County Boards of Education to pay and discharge any other obligations or debts other than those which had been created by the County Board of Education. The Act was for the relief of County Boards of Education and not for the relief of individuals and corporations. The "obligations or debts" were such as have been or might be "created" by the County Board of Education, and not such as have been or might be created by individuals or corporations. The authority given the County Board of Education to refund money out of district tax to persons and corporations was limited to those cases where money had been **advanced**, and in my judgment the "advance" must have been or must be an advance of money to the County Board of Education and not to individuals or corporations.

I do not believe that the Act approved February 10, 1923, carried as paragraphs 112 and 113 of the School Code, has any application here, because, from your statement of facts furnished me, it does not appear that the acts were accomplished in "anticipation" of a district tax election and in the belief that the proceeds of such a tax would be applied to the construction of a public school building in the district.

I might say further that neither paragraph 111 nor 112 of the School Code would permit the County Board of Education to use district three mill taxes for the purpose of reimbursing persons, firms or corporations for **donations** made toward the erection, repair or equipment of public school buildings.

Under the foregoing statement of facts, set forth by you, and confining my opinion to a construction of paragraph 111 of the School Code, which, under your statement of facts, seems to be the only provision of law which might apply, I advise you that it is my opinion that you are without legal authority to repay the trustees, persons, or banks, either one of the notes mentioned by you, and that the obligations are to be considered as transactions between the banks and individuals who signed the notes, and that the banks must look to those individuals for payment of such obligations.

You might advise me when the district tax election was held in the Magnolia district, whereupon I shall be glad to let you know whether I think that the transactions come within the provisions of paragraph 112 of the School Code.

In any event I wish to call your particular attention to Section 2690 of the Code of Alabama and Sections 5017, 5018 and 5019 of said Code, which, in my judgment, would apply where records and accounts subject to examination by the State Examiners' Department, had not been kept and preserved as contemplated by Section 2690 of said Code.

In other words, in view of Section 2690 of the Code, it is my opinion that in the event you saw fit to pay a bill or a claim out of public school funds, you would be required to have on file full and detailed information in reference to such matters from which the Examiners' Department could gain knowledge of the actual status and condition of the affair without reference

to extraneous information, and I would interpret this to mean that before you could pay a claim or a bill you would be required to have on file adequate evidence that the money had been spent for the purposes indicated.

Trusting that the above fully answers your inquiry, I am with kindest personal regards,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 23, 1927.

Hon. Winston Huddleston,
Circuit Solicitor,
Wetumpka, Alabama.

Dear Sir:

Your favor of February 22nd, asking whether or not a county solicitor is required to prosecute bastardy proceedings in the Justice Court, and further if he is not required to prosecute these cases in the Justice Court, would he be permitted to charge the complainant in such cases a fee for representing her before the Justice.

I am of the opinion that the Solicitor does not, as a matter of duty imposed on him, have to prosecute these cases before the different Justices of the Peace of the County.

It is a quasi criminal proceeding, taking both as the term suggests the nature of a criminal and civil proceeding, (67 Ala. 81; 73 Ala. 11; 72 Ala. 173) and comes into the circuit court on the original affidavit preferred before the Justice of the Peace, should the Justice trying the case determine that the case should be further prosecuted. In this character of case, the evidence is required to satisfy the jury, not beyond a reasonable doubt, but only to a moral certainty. (124 Ala. 94.) When this case reaches the circuit court, it becomes the duty of the solicitor and he is required to prosecute the case there. As you will see by reading Chapter 85, Sections 3416 to 3439, both inclusive, of the Code, the Justice of the Peace does not have final jurisdiction, but on examining the accused and his witnesses and the prosecutrix and her witnesses if he is satisfied that there is cause to believe that the accused is guilty of the charge, he must require him to enter into bond with sufficient surety conditioned that the accused will appear at the next session of the circuit court or court of like jurisdiction of said county, and there the issue is made up between the accused and the State, and is tried. Therefore, I do not think that the solicitor of the county or circuit could be paid a fee for representing the prosecutrix or the State in the Justice Court.

Hoping this answers your questions, I beg to remain

Cordially yours,
CHARLIE C. McCALL,
Attorney General.

February 23, 1927.

Hon. Bibb Graves,
Governor of Alabama,
Capitol.

Sir:

My understanding is that the attached record of Curtis Adams, convicted of murder in the second degree, and sentenced to eighteen years hard labor, which sentence began October 30, 1925, has been submitted by you to the Board of Pardons for an indication of its action as to whether or not said Board will recommend to your Excellency that Adams be granted any further **temporary** parole at this time.

The members of the Board of Pardons had a conference in regard to whether or not it is their duty and within their province to act on applications for temporary paroles.

I have informed Hon. S. H. Blan and Hon. John Brandon, who are the remaining members of the Board of Pardons that, as Attorney General, it is my opinion, in view of Section 124 of the Constitution of Alabama, that it is the duty of the Board of Pardons to consider **all** applications for pardons, paroles, and commutation of sentences, in cases of felony, and that in my judgment this includes applications for temporary paroles in cases of felony. It is my opinion that, in view of Section 124 of the Constitution, the Governor is without legal authority to grant a temporary parole in cases of felony, without the application for such temporary parole having been submitted to the Board of Pardons.

There is nothing in the Acts of the Legislature relating to temporary paroles, and even if there were anything in such Acts indicating that the Governor could grant temporary paroles in cases of felony without first submitting same to the Board of Pardons, it seems to me that such Acts would be clearly unconstitutional.

Turning now to a consideration of the merits of the application of Curtis Adams for an extension of his parole, I do not believe that the circumstances surrounding the commission of the crime of which he was convicted and for which he was sentenced, nor any circumstances which have developed since that date, as shown by the record before me, would justify your Excellency in granting any extension of his parole.

I, therefore, recommend that his temporary parole be not extended, and that no further clemency be extended to him at this time.

Yours truly,

CHARLIE C. McCALL,
Attorney General.
Chairman Board of Pardons.

February 25, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

Your favor of February 23rd, to hand asking an opinion as to the following matters:

> "Please advise us whether or not the County may legally pay for hand-cuffs for use of the sheriff's office of the county, and also, whether or not we may legally pay for long distance telephone calls to hard labor contractor, notifying them when we have some convicts to deliver."

We find no authority of law authorizing the Court of County Commissioners to purchase for the sheriff of any county hand-cuffs, pistols, etc.

The Court of County Commissioners being purely a creature of the statute and not of the Constitution derives all of its authority from statutory law; it has no inherent or constitutional powers.

117 Ala. 203. 23 So. 807. 70 Ala. 145.

Under sub-section 16 of Section 6755, of the Code of Alabama, it is my opinion that the authority granted to the Court of County Commissioners to "procure and provide telephones" for certain officers therein mentioned, necessarily implies the authority to incur necessary telephone expenses. If, in the discharge of his official duties, and not otherwise, a County officer mentioned in sub-section 16 of Section 6755, finds it necessary to use the telephone which has been installed in his office to call long distance, it is my opinion that such an expense as is involved in the long distance call on official business, would be a legitimate charge. In this connection however, I invite your attention to sub-section 4 of Section 6755 which contemplates and requires that such accounts be examined by the Court of County Commissioners before they are allowed.

In order for you to secure the allowance of a claim based on long distance telephone charges, it would be necessary for you to submit the account, properly itemized, showing who made the call and to whom it was made and that you certified that same was on official business and that the account is due and unpaid.

I might say further that, in my opinion, it is purely within the province of the Court of Commissioners under sub-section 16 of Section 6755 to decide whether or not it will allow an officer to use the telephone for long distance calls.

Trusting that this answers your inquiry fully, I am, with kindest regards,

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

CCM-b
February 26, 1927.

Hon. J. J. Cockrell,
Member, Text Book Committee,
Montgomery, Alabama.

Dear Sir:

Your letter of February 25th has been received. In it you request an opinion as to whether or not under the S. J. R. No. 10, creating a joint committee in the Senate and House to investigate school textbooks, you are authorized to pay the expenses of persons subpoenaed to appear before said committee.

In answer to your inquiry, I have the honor to advise you that it is my opinion that under said resolution, you have no such authority. I invite your attention to that opinion rendered by the Attorney General on March 18, 1915, (Opinions of Attorney General, 1914-16, p. 81), wherein it was held that the State Auditor had no authority by virtue of a joint resolution alone to draw his warrant for payment of the traveling expenses of members of the Recess Committee. It was there held that a resolution, not being read, referred as required and signed by the Governor, is not law.

(Const., Secs. 61-63, 66, 125.)

It is merely a form in which a Legislative body expresses an opinion. (See also

Moren v. Blue, 47 Ala. 711-713,
Reynolds v. Taylor, 43 Ala. 420-430;

and other cases cited in the above mentioned opinion of the Attorney General.)

While, by a joint resolution, the Legislature may authorize the employment of persons mentioned in that resolution, such a resolution, standing alone, is not sufficient authority for the State Auditor to make payments to the persons who have been employed by authority of that resolution.

I find nothing in S. J. R. No. 10, authorizing the payment of expenses of witnesses, and I find nothing in any Acts of this Legislature appropriating funds for such a purpose.

Trusting that this answers your inquiry fully, I am,

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

February 26, 1927.

Hon. Earl Speight,
Secretary to the Senate,
Capitol.

Dear Sir:

With reference to your inquiry whether or not under authority of House Joint Resolution No. 19, approved February 18, 1927, Section 5 thereof, the recess committees of the Legislature may employ janitors in the discharge of

the duties of said committees, I beg to advise that I am of the opinion that said resolution does not permit of such employment.

The resolution authorizes the employment of "clerks, stenographers or other assistants" at such reasonable compensation as may be fixed by the Committee. My judgment is that the expression "other assistants" does not include janitors. It is a familiar principle of law that where general words follow a designation of particular classes of persons, the meaning of the general words will ordinarily be presumed to be restricted by the particular designation and to include only persons of the same class as those specifically enumerated, unless there is a clear manifestation of a contrary purpose.

I think it is clear from a reading of this resolution and of others relating to the same subject, that it was not the intention of the Legislature that the "other assistants" should be those who were to perform menial services. Clerks and stenographers are certainly not in the class with janitors, but it is commonly known that clerks and stenographers are employed to perform special services ordinarily requiring a higher degree of qualifications.

Therefore, it is my opinion that the words "other assistants" as used in H. J. R. 19, supra, refer to assistants who have some special qualification, and are of the same category as clerks and stenographers.

Permit me to say that the Governor may use his contingent fund in the employment of janitors for committees.

Trusting that this answers your inquiry fully, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 28, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Public Accounts,
Capitol.

Dear Sir:

In reply to your request for an opinion of date of February 24th, I herewith submit the following:

You ask whether or not the Clerk of the Circuit Court of Coosa County, may be employed by the Court of County Commissioners as Hard Labor Agent for the County.

While the Court of County Commissioners may have authority to employ or apoint a person or agent for said Court in the hiring of convicts, Section 3691, Code of 1923, yet such person would be taking a contract for work or services for the County.

The Clerk of the Circuit Court is expressly prohibited taking a contract to perform services for the County.

Section 5024, Code of 1923.

Hoping the above expression furnishes the desired information, I am,

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

February 28, 1927.

Hon. Geo. W. Andrews,
County Solicitor,
Union Springs, Alabama.

Dear Sir:

Your letter of February 26th received. You state that Mr. F. B. Haynes, County Superintendent of Education of your county, died recently, and that at a meeting of the County Board of Education held February 25, 1927, the County Board elected Mr. M. K. Johnson to fill the vacancy. You further state that Mr. Johnson is teaching school at the present time and will not begin his duties as County Superintendent of Education until June, 1927.

You also state that the county board of education in the meantime has authorized Hon. R. E. L. Cope, Chairman of the Board, to sign checks drawn on school funds, and you ask if there is any authority of law for such procedure.

In answer to your inquiry I advise you that paragraph 83 of the School Code of Alabama of 1924 provides that the County Board of Education shall appoint "as its **executive** officer" a County Superintendent of Education "who shall also be the secretary of the County Board of Education." In this paragraph of the School Code the superintendent's duties as secretary are defined, and it is further provided, as follows:

> "In case the office of county superintendent of education is temporarily vacated, or when the county superintendent of education is absent by reason of the nature of business in hand, or otherwise, the Board shall appoint one of its members to act for the time being as **secretary.**"

In paragraph 84 of the said School Code provision is made for the appointment of a county treasurer of school funds, and it is further stated that:

> "He shall pay out all such moneys upon the written order of the county board of education through its **executive** officer, the county superintendent of education, and shall perform such other **duties as may be** prescribed by law."

Your attention is also invited to paragraphs 250 and 252 of said School Code.

The law clearly contemplates and requires (paragraph 140, School Code) that in the disbursement of public school funds the county superintendent of education prepare the pay rolls and submit them to the county treasurer of school funds for payment. Warrants drawn on public school funds are required to be signed by the county treasurer of school funds, who cannot issue said warrants unless he has been first furnished with a pay roll under paragraph 140 of the School Code, by the county superintendent of education.

Therefore, it is my opinion that Mr. Cope would have no authority of law to sign checks drawn on school funds.

It is possible that the intention of the County Board in appointing Mr. Cope was that he was to act in lieu of and to perform the duties of

county superintendent of education until Mr. Johnson took office. No doubt, the Board in appointing Mr. Cope to perform these duties, did so under paragraph 83 of the School Code. It will be observed, however, that paragraph 83 of said School Code merely authorizes the appointment by the Board of a member thereof to act as **secretary,** and the duties of secretary to the County Board of Education are clearly defined in that paragraph. Among the duties defined, it does not appear that such a secretary has the power to act as executive officer to the county board. You will notice that a county superintendent of education is not only the chief executive officer of the county board of education, but is also secretary to the board. As secretary he performs merely ministerial duties. As executive officer, he performs all these duties which are not purely ministerial, and amongst these are the preparation of pay rolls, contracting with teachers and executing the general policy of the County Board of Education.

It is, therefore, my opinion that where the office of county superintendent of education is temporarily vacant, and the County Board of Education has appointed one of its members to act as secretary, such secretary has no power to execute pay rolls as contemplated by paragraph 140 of the School Code, this being more than a ministerial duty.

Permit me to say also that where the office of county superintendent of education is vacated by the death, resignation or removal of said superintendent, it is the duty of the county board of education, under the general law, to fill that vacancy by appointment of one possessed of the qualifications prescribed by law. In filling the vacancy the Board does not merely appoint one to fill the unexpired term of the superintendent who has vacated the office, but the Board may appoint one for a term of not less than two nor more than five years. In other words, in the instant case, if Mr. Haynes had only seven months to serve when he died, the Board would fill the vacancy by appointment of one to serve for not less than two years, and seven months, and not merely for the unexpired term of seven months. Under the facts set forth in your letter, I would suggest that the County Board amend its action so that Mr. Johnson may proceed immediately with his duties as county superintendent of education instead of waiting until June of this year.

You can readily see that, the members of the county board of education, not being bonded officers, if one of them were permitted to execute pay rolls on public school funds, and in the discharge of this function illegally ordered the treasurer to disburse funds there would be absolutely no protection to the State and County.

Trusting this answers your inquiry, with personal regards, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

February 28, 1927.

Hon. Zack Rogers,
County Superintendent of Education,
Butler, Alabama.

Dear Sir:

I have your letter of February 26th. In it you give the following statement of facts:

> About four years ago a State aid school building was erected at Gilbertown, in Choctaw County. Upon its completion it was discovered that the local funds and State funds would not meet the indebtedness for the erection of this building and before the State warrant could be released it was necessary that all indebtedness except the amount of the State warrant be paid. In order to do this Dr. Sam Alman and several other citizens executed a note payable to the Peoples Bank of Gilbertown, Alabama, in payment of that part of the indebtedness not covered by the State warrant, and in the amount of a $1,000.00. Dr. Alman is now dead.

You ask if the County Board of Education has legal authority to assume this note.

In answer to your inquiry I advise you that it is my opinion that the County Board of Education has no legal authority to assume this note. It was not an obligation or debt created by the County Board of Education, but was purely a transaction by the individuals, and the bank must look to the signers of the note for payment thereof.

Trusting this answers your inquiry, I am with kindest personal regards,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 2, 1927.

Judge L. B. Riddle,
Judge of Probate, Shelby County,
Columbiana, Alabama.

Dear Sir:

We are writing you with reference to filing tax on deed offered for record in your county by the Vidor Lumber Company. It appears that this deed was filed for record in Jefferson County in May, 1923, before the deed filing tax was passed in September, 1923, and hence no filing tax was paid at such time. The question now is whether or not on filing this deed for record in Shelby County, a deed filing tax should be paid, and, if so, what amount.

Upon careful reading of the Act approved September 14, 1923, Acts 1923, pages 318 and 319, I find that no provision is made for deducting anything from the amount to be paid when the deed is filed for record in Shelby County on account of its having been previously recorded in Jefferson County, except where a deed filing tax was paid for filing such a deed in Jefferson

County. In other words, there is no provision made for any deduction where a deed was recorded in Jefferson County prior to the passage of the deed filing tax in 1923. In other words, no provision is made in the law for any deduction on account of said prior record and there is no provision made for allowing such deed to be filed for record in some other county than the county in which it was first recorded when no filing tax was paid in the first instance, although no filing tax was exacted in the first instance, such record having been made prior to the passage of the law. This, possibly, may have been an oversight in the Legislature in the passage of the law, but neither this ofifce nor the Judge of Probate has any legislative power and must take the law as we find it. We are, therefore, of the opinion that before receiving such deed in Shelby County for record the party offering such deed for record must pay a filing tax of $.50 on each $500.00 of value of property as of the date of the deed. In other words, it is our opinion, that in computing the value, which is the measure of the tax, the value of the date of the conveyance controls.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 2, 1927.

Hon. L. H. Brassell, Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of March 2nd asking for an opinion upon the question propounded by Mr. R. L. Nathan, agent for the State Tax Commission. The question propounded by Mr. Nathan is as follows:

> "The Tennessee Valley Sand and Gravel Company, a domestic corporation, has a Sand and Gravel business in this County, they have assessed their physical property situated in this County but they have two boats, one of which is used to some extent in their business here, on the Tennessee River, this boat was purchased in St. Louis a year ago and is licensed by the United States Government to operate on the Mississippi River and its tributaries, this boat was used here on occasions in hauling barges loaded with sand and gravel to the Sheffield landing. The question is, should the Company assess said steam boat in Colbert County, Alabama, and pay taxes thereon."

In reply will say that the boat in question is presumptively assessable in the county where the corporation has its principal place of business and should be assessed there unless the corporation shows that such boat is habitually kept elsewhere than in said county and is assessed for taxes elsewhere. Of course the citus for taxation is wherever the boat is habitually kept and used but if kept part of the time in Colbert County and part of the

time elsewhere, and the principal office of the corporation is in Colbert County, then, in my opinion, said boat should be assessed for taxation in Colbert County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 4th, 1927.

Mr. W. G. Culp,
Chief Deputy Sheriff,
Clanton, Alabama.

Dear Sir:

Your letter dated March 3rd has been received. In it you requested an opinion as to whether or not the County may legally furnish the Sheriff with a typewriter and pay for the same out of County funds.

Webster defines "stationery" to be such articles as are usually sold by stationers as paper, ink, quills, pens, blank books, etc., but our court, in construing Section 10205 of the Code of Alabama, 1923, has given it a much broader and more comprehensive meaning. This section reads as follows:

> "The Court of County Commissioners must furnish books and stationery to the sheriff for official use, in the same manner that books and stationery are furnished to the clerk of the circuit court."

In construing this section and kindred statutes, our Supreme Court has interpreted it to include typewriters, saying they are included in the statute providing stationery for the various public officers.

144 Ala. 505. 203 Ala. 128.

An opinion, by a former Attorney General, was rendered February 27, 1919, (Biennial Report, Attorney General, 1918-1920, p. 105), in harmony with the cases cited above.

Therefore, it is my opinion that a typewriter purchased for the sheriff's office, to be used in the performance of his duties as said sheriff is a proper charge against the County.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

March 5th, 1927.

Hon. J. G. Austin,
County Superintendent of Education,
Geneva, Alabama.

Dear Sir:

Your letter of February 28th has been received. In it you state that your County Board of Education is preparing a budget for the distribution of that part of the State School fund which has been apportioned your County

pursuant to Act approved January 28, 1927. In your letter you outline the method followed by your Board in apportioning school funds generally. You state that your County Board of Education apportions "general funds, County three-mill tax, bonus funds and poll-tax," to the schools of the County on the basis of the number of teachers needed per school, and that this method is used in apportioning funds to city Boards of Education; you further state that you appropriate the above mentioned school funds to City Boards of Education on the basis of a salary schedule adopted by the County Board of Education for the county as a whole. You also state that, having arrived at the total amount of money needed to pay the salaries of all the teachers in the county, apparently both city and county teachers and presumably for one school month, you take this amount and divide the general fund by it to determine the number of months the schools may run. You state that, following this method, the schools of your county have been able to run five (5) months. You also state that the City Boards of Education extend the terms of their schools by local district tax and local subscriptions and some of the rural schools of the county are extended to nine (9) months by local district tax and local subscriptions.

After giving this statement of facts you ask if it is legal for your County Board of Education to apportion that part of the State School funds allocated to it under the Act approved January 28, 1927, to city or rural schools which ran for a period of nine (9) months during the year ending September 30, 1926, on local tax and public subscriptions but which ran only five (5) months on funds appropriated to such schools from the County Board of Education.

In answer to your question and considering the facts to be as stated by you, I beg to advise that some weeks ago, I rendered an opinion in which I held that the appropriation of $600,000.00 covered by the Act approved January 28th, 1927, was unconstitutional and void. In that opinion I held said Act to be in violation of Sections 110 and 260 of the Constitution of Alabama. Shortly after the rendition of my opinion, the Governor of the State secured an advisory opinion from the individual justices of the Supreme Court of Alabama in which six (6) of them, individually, held said Act not to be in violation of Section 110 of the Constitution, while another, believing the Advisory Opinion Act to be illegal, refused to render any opinion. These advisory opinions of the **individual justices** of the Supreme Court were not opinions of the **Supreme Court** and did not then, and do not now, and cannot bias me as Attorney General of the State to any conclusion which they, as **individual** justices, may have reached. In my opinion, the Act approved January 28th, 1927, making an appropriation of $600,000.00 for educational purposes is grossly violative of the Constitution of the State of Alabama and upsets a fundamental principle of government by constituting an attempt to exact tribute from the people of the whole state for the benefit of only certain political subdivisions thereof. Long ago it has been said by those interested in protection of the rights of our people that we will pay millions for defense but not one cent for tribute. I still hold to the opinion which I have expressed concerning the unconstitutionality of this Act of the Legislature, and further reading and study has convinced me more than ever that my opinion is correct. I not only believe said Act to be in violation of the State

Constitution of Alabama, but I believe it to be in violation of the United States Constitution.

However, without changing my opinion in the slightest concerning the invalidity of this Act, I will give you my opinion as to the proper use to which funds apportioned your county by it may be put.

The object of this appropriation is set forth in the Act. It is to insure "a minimum school term of seven (7) months or one hundred and forty (140) days" in the public schools of the state for the current fiscal year ending September 30, 1927, "based on total expenditures from all sources for the operation of the several schools for the year ending September 30, 1926." By Section 4 of said Act it is provided that the funds coming to a County Board of Education by virtue of said Act shall be used **exclusively** for the purpose mentioned above.

I am, therefore, of the opinion, that your County Board of Education can use no part of the funds provided by the Act approved January 28, 1927, for any school in the County which runs one hundred and forty (140) days this year as a result of and with all general and local funds and public subscriptions. In other words, if, having exhausted your general state apportionment, your county three-mill tax, your county 1-mill tax, your bonus fund, your poll tax and other state funds, and your district tax and local donations or subscriptions, any school in your county runs only one hundred and forty (140) days, you would not be authorized to use any part of the fund coming to you by the Act on such a school. I am also of the opinion that you could use no part of this particular fund in extending the term of a school beyond one hundred and forty (140) days. It is well to note also that this particular fund must be used for the purpose of paying salaries of teachers **actually engaged in teaching** and that it cannot be used for any other purpose.

It is well to observe also, that, following Section 4 of the Act approved January 20, 1927, the distribution of this fund must be amongst and to each and every public school in the County which, after having considered all other available funds, does not run one hundred and forty (140) days. In other words, there is no discretion left to the Board of Education as to the distribution of this fund. The Act does not permit the County Board of Education to use this fund to extend the terms of a part of the public schools of the County to one hundred and forty (140) days and leave other schools in the County without such extension. **Every** school which runs **less than** one hundred and forty (140) days on all other available funds this year is entitled to participate in this particular fund as equitably as and equally with every other school in the county so affected.

It is not what the various schools did **last** fiscal year which governs **county** distribution. That governed **state** distribution. Your distribution is to be based on what the schools do this year with other funds at their disposal, and is not to be accomplished until you know what they have accomplished.

In the same letter you request an opinion as to whether or not school funds of your county can be used in payment for the printing of the annual reports of the County Board of Education. In answer thereto, I beg to advise that under paragraph 137 of the School Code of 1924, it is the duty of the

Commissioner's Court or Board of Revenue to furnish you with office quarters, furniture, office equipment, stationery, postage, forms and **supplies** required by you and your assistants. Under and by virtue of this paragraph of the School Code, it is my opinion that it is the duty of the Commissioner's Court of your county to furnish the paper on which the annual report of the County Board of Education is printed and that you cannot pay for this paper with any school funds. However, it is my opinion that you can use the County three-mill tax or bonus fund in payment of the printing of this report.

You also ask if school funds can be used in payment for reports to be used by teachers. I am of the opinion that such reports and the printing thereof come within the provisions of Paragraph 137 of the School Code and that school funds cannot be used for the purchase of said reports. I believe that they come within the expression "forms" as used in said paragraph.

You also request an opinion as to whether school funds can be used in payment for the rental charge on a telephone and for long distance telephone messages. Construing Paragraph 137 of the School Code—"Office equipment,"—it is my opinion that you cannot use any part of the school funds of the County in payment of such expenses and that it is the duty of the Commissioner's Court to furnish you with a telephone and it may be, if in its judgment, it thinks expedient, allow you to use it for long distance messages.

Trusting that this answers your inquiries fully, I am, with best wishes,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 5, 1927.

Hon. Frank H. Julian,
Superintendent of Insurance,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of inquiry of February 25th. You write as follows:

> "The Bureau of Insurance under the provisions of the above law, and in conformity with the laws passed during the session of the legislature in August, 1907, which latter law seems to have been omitted by the codifier of the Code, has held certain deposits of mutual aid companies operating in this state.
>
> "Under Code section 8405, you will note a requirement that the Insurance Commissioner may require the publication in a newspaper published in Montgomery notice of the intention of the mutual aid company to withdraw this deposit; said notice shall appear at least once a week for six months.
>
> Code section 8407, you will note, is a combination of the Acts of September 4, 1915, page 351, and Acts of February 7, 1923, page 18.

The same is true of 8408 and 8409. In view of the conflict contained in the several enactments, I desire you to advise me as to the proper procedure and whether or not it is necessary to require publication in a newspaper published in Montgomery at least once a week for six months (section 8405); or whether or not the Insurance Commissioner shall deliver the said deposits in accord with 8407-08-09."

In reply will say that in my opinion there is no necessary conflict between Sections 8405 and 8406 of the Code 1923 and Sections 8407, 8408 and 8409 of said Code. Sections 8405 and 8406 apply in cases where there is not reinsurance by such a company of all its policy contracts. Sections 8407, 8408 and 8409 apply in cases where there is reinsurance by such a company of all of its policy contracts. When so viewed, all apparent conflicts disappear. The publication required by Section 8405 is in cases where such companies or corporations desire to relinquish further business without having first reinsured all its policy contracts. Where all policy contracts have been reinsured in the manner provided by section 8407 and approved by you as provided in Sections 8408 and 8409, the advertisement required by Section 8405 does not apply.

Respectfully,
CHARLIE C. McCALL,
Attorney General.

March 7th, 1927.

Hon. C. A. Walton,
State Senator,
Capitol.

Dear Sir:

I have your letter of March 7, 1927, concerning Senate Joint Resolution No. 26, approved February 18, 1927, which created a Joint Committee of the House and Senate to investigate the Girls' Industrial School of Alabama and other institutions of like kind and character.

You inquire if the members of this Committee are entitled to receive $10.00 per diem as provided by said resolution. You also inquire whether this committee is empowered and authorized to employ a committee clerk.

On February 1, 1927, an Act was approved which had for its purpose fixing the compensation of recess committees or commissions provided by Joint Resolution or Act of the two Houses of the Legislature. (House Bill 95.) Under the provisions of this Act the members of such committees or commissions are entitled to receive a per diem of $8.00 per day for the entire time engaged, except in cases of adjournment exceeding three days. Such committee members are also entitled to collect mileage in traveling to and from their residence to the Capitol, with the exceptions noted in the Act, and in the manner therein provided.

It is also provided by said Act that members of such committees or commissions may be re-imbursed their actual traveling expenses in addition to the above per diem and traveling expenses when, in the judgment of any Committee it shall be necessary to travel away from the Capitol.

A resolution of either or both Houses of the Legislature is not law and cannot serve as a basis for compensating members of committees raised by such resolutions. (See Opinion Attorney General 1914-1916, p. 81.) A resolution is not law

Moren vs. Blue, 47 Ala. 711-713.

Senate Joint Resolution No. 27 contemplated that the Committee travel away from the Capitol to investigate the Girls' Industrial School of Alabama, and other institutions of like kind and character. In thus traveling members of said committee are entitled to reimbursement for their actual traveling expenses, as provided by the Act approved Feb. 18, 1927.

The members of this committee cannot receive $10.00 per diem but they receive $8.00 per diem, under the Act approved February 18, 1927. The reason for this is that the resolution cannot have the effect of changing an Act of the Legislature on the same subject, for an Act of the Legislature supercedes a resolution.

Rice, etc., vs. State, 95 Ind. p. 64.

The resolution to which you refer does not authorize the employment of any clerical assistance for said committee. No clerical assistance and no committee clerks can be employed by this committee.

Hoping this answers your inquiry fully, I am, with personal regards,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 9th, 1927.

Hon. Ben. G. Perry,
Deputy Solicitor,
Bessemer, Alabama.

Dear Sir:

I am in receipt of yours of March 3rd in reference to the opinion rendered Hon. E. C. Hines, Clerk of the Circuit Court, Bessemer Division, March 2nd, 1927.

I have read carefully Sections 4749, 4741, 4742 of the Code of 1923, and, the Local Act which creates the Bessemer Court of Misdemeanors, Local Acts 1923, page 43.

The Act creating the Bessemer Court of Misdemeanors, (Local Acts, 1923, supra), does expressly deny to said court jurisdiction of all offenses arising under the prohibition laws and it is true that a search warrant does not per se have to do with any definite criminal prosecution. It is also true a criminal prosecution may grow out of such a procedure. Search warrants are available in public prosecutions. Even in these cases, if we may rely on the authority of Lord Coke, their legality was formerly denied. Lord Camden said "they crept into the law by imperceptible practice." Their legality has come to be recognized universally by our courts, purely on the ground of public necessity. Search warrants are not allowed for the purpose of obtain-

ing evidence, but they should be allowed only after the evidence has been obtained. However, there are exceptions to this rule, such as searches for stolen goods, or smuggled goods in violation of Revenue Laws, and implements for gaming, counterfeiting, lottery tickets, etc.

City of Bessemer vs. Eidge, 162 Ala. 201.

Cooley in his work on constitutional law states:

"It is oft times better that crimes should go unpunished than that citizens should be liable to have their premises invaded and private books and papers exposed or destroyed at the hands of ignorant and suspicious men."

(Cooley on Constitutional Law, 372.)

It is a maxim of law that every man's house is his castle. There is a constitutional provision for the right of the people to be secure in their person, houses, papers and effects, against unreasonable searches and seizures.

It was said by Lord Chatham that—

"The poorest man in his cottage may bid defiance to all the forces of the crown; it may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the king may not enter and all his forces dare not cross the threshold of the ruined tenement."

I refer to the above as showing the strictness of our laws in their operation and the protection afforded the rights of citizens in their application.

Chapter 167 of the Code deals with search warrants as they pertain to prohibited liquors. You will note in Section 4749 of said Chapter, it is provided that the warrant "must be executed and returned to the magistrate by whom it was issued * * *." My opinion is that the statute above quoted must govern.

A search warrant is not a criminal proceeding in our practice, although it has become the main weapon in criminal proceedings; however, it may be issued for the release of females in houses of ill fame; for the recovery of children enticed away from their parents, and for the unlawful detention of any person.

City of Bessemer vs. Eidge, 162 Ala. 203-06, 50 So. 270.

A search warrant may issue in aid of a civil process. (162 Ala. 203, supra). Section Five of the Act establishing the Bessemer Court of Misdemeanors, (Local Acts 1923, page 43), reads as follows:

"That the Ex-Officio Judge of said Court shall be a magistrate and conservator of the peace, may take affidavits and warrants in felony cases returnable before himself, or before any other magistrate having jurisdiction, and may take affidavits and warrants for misdemeanors directly returnable to himself in cases in which said court shall have final

jurisdiction of the offense, or in cases where said court does not have final jurisdiction, to any court having final jurisdiction thereof, including warrants returnable to the Juvenile Court of Jefferson County, Alabama.

This part of said section does not apply, nor do I believe it can be construed to include **search** warrants. A search is not a misdemeanor and, in fact, it cannot be termed a criminal proceeding. It may be used in **aid** of a criminal investigation, or to aid in a civil proceeding.

City of Bessemer vs. Eidge, supra.

I am of the opinion that the Bessemer Court of Misdemeanors is not empowered to and cannot issue search warrants returnable to the Circuit Court of Jefferson County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 9th, 1927.

Hon. Willard Drake,
Assistant Solicitor,
Birmingham, Alabama.

Dear Sir:

I acknowledge receipt of your favor of March 1st, in which you make the following inquiry:

First, you desire a reference to an Alabama authority, which holds that a warrant may be sworn out before a Circuit Judge in one county and made returnable before a Circuit Judge in another county, and

Second, you want to know whether or not extradition papers could properly issue on a warrant of arrest issued by a Circuit Judge, where no indictment has previously been found.

In answer to your first proposition, I would refer you to the case of Philips vs. Morrow, 210 Ala. 34, wherein the authorities on the subject are collated.

Your second proposition has to do with a requisition for extradition. In this connection, Code Section 4179 reads as follows:

"The governor may appoint agents to demand and receive from the executive authority of another state any fugitive from justice or person charged with any crime in this state; **and any application to the governor for that purpose shall be sustained by a properly attested copy of the record of the proceedings against the accused person, with affidavits of one or more of the principal witnesses.**"

The foregoing is all that can be found in our statutes pertaining directly to this subject. We have certain executive rules touching the subject, which are as follows:

"Application for a demand by the Governor of this State to the Governor of any other State, for the extradition of a fugitive from justice in this State, must clearly and succinctly set forth:

1. Name of the person to be demanded.
2. The offense with which he is charged.
3. The County in which the offense is laid.
4. The State to which the accused has escaped.
5. The name of a suitable person to be commissioned as the agent of this State in the extradition.
6. Without a special and satisfactory reason therefor, no person will be appointed and commissioned as such agent, in any case, who has a personal or private interest in the apprehension of the fugitive, or who has a strong motive for making any adjustment, or settlement or compromise with him by which the object of the requisition would be defeated."

The application must come from, or be approved by, the Solicitor of the Circuit or his representative in the County, giving his opinion whether or not a conviction will be secured if the fugitive is brought back; and it must aver, under oath, that the accused person has fled the state, that the ends of justice require that he be brought to trial, and that the process will not be used to collect a debt or enforce a claim, but for the punishment of crime.

The State will not pay the expenses of bringing a fugitive to justice unless some public good is to be subserved thereby, and will NOT IN ANY CASE pay the expense of a guard unless specially authorized by the Governor in advance.

With the application, there must be filed here two certified copies of the indictment, or, if no indictment has been found, **two certified copies of an affidavit made before a magistrate of competent jurisdiction,** charging the person to be extradited with having committed treason, felony or other crime —one copy to be retained in this department, the other to be attached to and made a part of the requisition.

A warrant of arrest is not sufficient for the purpose of this proceeding.

Each requisition for extradition should be self-proving. The petition should be sworn to, and the official seal should always be affixed to the proper and necessary papers. It is true that the effect of the seal has been done away with in Alabama, but this does not apply to papers going out of the state. The State in which the fugitive may be found, or asylum State, cannot be held to know the statutory law of Alabama. Where the request is based on affidavit and complaint, an affidavit should accompany the requisition, stating in effect that the officer before whom complaint was made and by whom warrant or arrest was issued, was the officer that he purported to be at the time of the issuance of the papers and that full force and faith should be given to his official acts as such, and vouching for the genuineness or authenticity of his signature to such paper. A requisition for extradition should require no extrensic evidence to prove its validity.

Our State has adopted legislation auxiliary to the Act of Congress respecting fugitives from justice. Our law on this subject does not conflict with the Federal statutes in such cases made and provided.

Under the criminal procedure in Alabama, there are two ways of proceeding against one charged with the commission of a crime or offense; one

by a complaint supported by affidavit, before a magistrate of competent jurisdiction, and the other by indictment returned by a grand jury.

In view of this fact, all that the Governor requires before issuing requisition for extradition is that two properly attested copies of the proceeding against the fugitive be submitted to him, together with the petition setting out the required matter and things in conformity with the executive rules and regulations above enumerated.

Where there has been an indictment returned, of course, there should be two certified copies of the indictment, and where there is not indictment, but a complaint supported by affidavit issued by a magistrate of competent jurisdiction, there should be two certified copies of such proceeding.

Extradition papers can be issued on a warrant of arrest issued by a circuit judge, provided he has jurisdiction of the subject matter, regardless of the absence of an indictment against the accused. On this subject, no exception is made by our criminal procedure. Manifestly, if a circuit court must wait until an indictment is returned against a criminal before a requisition for extradition could properly be made, the State of Alabama would be put at great disadvantage in having a criminal brought back to this State for trial.

The following cases establish the competency and sufficiency of an affidavit for extradition purposes:

State vs. Richardson, 34 Minn. 115;
Hurtz vs. State, 22 Fla. 36,
In Re Keller, 36 Fed. Rep. 681. Also see
Moore on Extradition, Vol. 2, 876 to 882 inc.

Trusting that I have given you the desired information, I am

Very truly yours,
CHARLIE C. McCALL,
Attorney General.

March 10th, 1927.

Mr. Jas. F. Hawkins,
Tax Collector,
Room 205, Court House,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry of March 8th. In reply would say that in my opinion for the publication of tax sales, you must be governed by Section 250 of the General Revenue Act of 1919, Acts 1919, page 129, which is Section 229, page 129 of the Revenue Laws of Alabama, 1923, as compiled by Allen.

It is my opinion that Section 9262 of the Code of 1923 was not intended to apply to the advertisement of such tax lands, since we have a provision in said Section 250 of the Tax Laws for such advertisements.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 10th, 1927.

Hon. B. G. Wilson,
Circuit Solicitor,
Jasper, Alabama.

Dear Sir:

Your letter of March 8th received. You ask the opinion of this office as to the compensation which may be paid a person who served as a substitute for the sheriff in the general election.

My opinion is that the person who was appointed to serve on account of the ineligibility of the sheriff is entitled to only such pay as the sheriff would have been entitled to, or as any other election officer would have been entitled to, for holding and performing duties incident to the election.

Section 440 of the Code provides that any person serving as a member of the Appointing Board shall receive $4.00 for such services.

Section 509 further provides for the pay of election officers.

An officer claiming costs or fees must be able to point to authority of law for such claim. It is well settled that an officer or one performing the duties of the office must take the office and shall receive as compensation for his service only such as is by statute provided. If the compensation is inadequate, or is not provided for certain duties, the officer must take the office cum onere. I cannot find authority to compensate the person who served in the place of the sheriff, on account of his ineligibility, beyond that amount provided by statute for such service.

Therefore, I advise you that the Commissioner's Court should refuse to pay the bill presented.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
March 11, 1927.

Mr. W. T. Solley,
Tax Collector, Marshall County,
Guntersville, Alabama.

Dear Sir:

This acknowledges receipt of your letter of February 26th. You write as follows:

> "Where school districts overlap and the assessor has the same man's property listed wholly in two districts, which district gets the money—the first to lay tax or the last one?
>
> "The case I have in mind is W. L. Clayton. His property was included in district 45 when they voted school tax several years ago.
>
> "Later an adjoining district voted school tax and the County Board put his property in this district (No. 40).
>
> "So his property showed to be in two districts and the assessor has charged him in both—so I want to know which one to pay school tax to."

In reply will say that it is impossible for two school districts to overlap each other where a school district has been formed and a tax voted, if an attempt is made to form another district overlapping this first district, the proceeding to form the second district overlapping the first district is a void proceeding and there is, in fact, no second district so far as the law is concerned. If the property of Mr. W. L. Clayton is in the first district formed the tax should be paid to that district since there cannot be a second district formed partly of the first district.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 12th, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Ala.

Dear Judge:

Your letter of March 7th received. You inquire if it is legal for the Commissioners' Court to pay for long distance calls to the Alabama Insane Hospital at Tuscaloosa, when said calls are in reference to extreme patients whom you desire to send to Tuscaloosa immediately, the condition of said patients not permitting the delay occasioned by forwarding application by mail and awaiting reply from the Superintendent.

I am of the opinion that the Section of the Code relating to Commissioners' Courts which authorizes a Commissioners' Court to procure and provide telephones for County Officers carries with it the authority on the part of the Commissioners' Court to authorize those County officers who have been furnished with telephones to use same for long distance calls where said calls are on official business connected with the duties of the particular office in which the telephone is installed.

I am of the opinion that the County officer upon whom the duty devolves to communicate with the Alabama Insane Hospital in matters such as set forth above may, by permission of the Commissioners' Court be authorized to use the telephone which has been furnished his office in calling the Superintendent of said Hospital concerning the matter you mention.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 15, 1927.

Hon. E. J. Garrison,
Probate Judge of Clay County,
Ashland, Alabama.

Dear Sir:

I have received your letter of March 11th in which you call for my opinion on the following propositions:

First. Must the probate judge make and certify an alphabetical list of qualified electors registered by precincts to the inspectors immediately preceding the bond election on April 12th?

Second. If the probate judge is required to furnish such a list for the inspectors of said election, is he authorized, under Section 402, to employ such assistants and clerical help as may be necessary to furnish said list?

Third. Can absent voters vote by absentee ballot in the election of April 12th.

In answer to the first proposition, I am of the opinion that, under Code Sections 387 and 388, you must prepare such a list. However, this list is not to be published in a newspaper, but is to be furnished the election inspectors. The statute provides that the list of qualified electors be published every two years. Clearly, this list could not serve as a true and legal guide for elections held in odd numbered years.

The statute sets out the method of preparing these lists.

In answer to the second proposition, I am of the opinion that the probate judge is authorized, under Section 402, to employ such assistants and clerical help as may be necessary to complete said list. This section covers the preparation of lists of qualified voters for every legal election in this state.

In answer to the third proposition, it is my opinion that qualified, absent voters may vote in said election of April 12th, by complying with the statutes in such cases made and provided. Code Section 405 is broad enough to cover this proposition. Section 4 of the act which authorizes the election of April 12th reads as follows:

"Officers to hold such election shall be the same, and shall be appointed in the same manner and by the same officials as now provided by the election laws of the state for the appointment of officers to hold elections in this State and the election shall be held in all things in accordance with this Act, **the law governing general elections,** and the constitutional provisions concerning amendments to the Constitution."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 17th, 1927.

Hon. S. P. Rainer,
Judge of Probate,
Union Springs, Alabama.

Dear Sir:

Your letter of March 10th has been received. You ask if it is necessary that a list of the qualified electors be prepared for the special election to be held April 12, 1927? And, if so, is it necessary that such list be published?

I refer you to Sections 387 and 388 of the Code. It is my opinion that under authority of these sections, said list must be prepared, **but it is not required that it be published in a newspaper after its preparation.** However, it is required that you prepare or have prepared, an alphabetical list of the qualified electors registered by precincts and that you officially certify the same to be a full and correct copy of the lists of registered electors for each precinct, as the same appears from the returns of the board of registrars on file in your office, and the poll tax list which has been furnished you by the tax collector, and that you shall deliver or cause to be delivered one copy of said list so prepared for each precinct to the election inspectors in each precinct immediately preceding the election of April 12th. It is noted that the statute provides for the publication in a newspaper of the qualified electors of the county every two years. When it is remembered that the poll tax books close on February 1st of each year, it becomes manifest that the list published every two years could not serve as a true and legal guide for elections held in odd numbered years.

Under the authority of Code Section 3034, the Probate Judge receives from the Tax Collector each year, an alphabetical list of persons who have paid poll tax. This list is to be used by you in preparing the list of the qualified electors who are eligible to participate in the election of April 12th.

In this connection, you may desire to know whether or not the Probate Judge is authorized to employ such assistants and clerical help as may be necessary to furnish said list. I am of the opinion that the Judge of Probate is authorized, under Code section 402, to employ such assistants as may be necessary to complete said list. This section covers the preparation of lists of qualified voters for every legal election in this State.

Hoping that the above expression furnishes the desired information, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 17th, 1927.

Hon. W. Y. Hayes,
County Superintendent of Education,
Centreville, Alabama.

Dear Sir:

Your letter of March 15th received. You inquire whether or not a County Board of Education should furnish you with a telephone and pay for same out of school funds of the county, or whether the commissioner's court should furnish you with a telephone and pay for same with county funds. You

also ask if you can legally pay for your telephone service with school funds in the event the commissioner's court refuses to furnish you with a telephone.

I am of the opinion that under paragraph 137 of the School Code of 1924, it is the duty of the commissioner's court to furnish you with a telephone. I am of the opinion that the same should be paid for with **county** funds and not with **school funds.** In my judgment there is no authority of law for you to use school funds in payment for telephone services in your office. I hold also that where the commissioner's court refuses to furnish you with a telephone you cannot furnish same with school funds. You will **have to proceed against the** commissioners' court to compel it to perform its duty, or else do without a telephone.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

March 17th, 1927.

Hon. J. I. McClure,
Judge of Probate,
Florence, Alabama.

Dear Sir:

This acknowledges receipt of your letter of March 15th. You write as follows:

> "Please give me an opinion in regard to collecting charter fees on the following:
>
> "'The capital stock of this corporation shall be of two classes, common and preferred, and the par value per share of preferred stock will be one hundred dollars, and the common stock will be without par value. There will be an authorized common stock of one thousand shares, and the corporation will begin business with a paid capital of one thousand shares.'
>
> "Would the common and preferred stock both be taxable?"

In reply will say that in collecting the charter fee both the preferred stock and the common stock should be considered in estimating the amount. As to the common stock of non par value, I call your attention to section 7012 of the Code of 1923, for estimating the amount so far as the non par value stock is concerned the preferred stock, of course, is placed by the charter at $100.00 per share, and the non par value common stock is placed by section 7012 of the Code at $100.00 per share unless proof is made to you that it has a different value from $100.00 per share. In such a case it must be estimated upon its actual value as shown by the evidence before you.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

March 17th, 1927.

Hon. R. H. Williams,
Judge of Probate,
Guntersville, Alabama.

Dear Sir:

Your letter of March 15th received. You state that there is a school district known as High Point School District No. 45 in which there is now being levied and collected a special three mill district school tax and that this tax will continue in existence for a period of seven years. You also state that there is certain territory adjoining district No. 45 which has been made into a school district but in which there is not now any district tax being levied and collected. You further state that it is the desire of the County Board of Education of Marshall County to consolidate all of this territory into one tax district. You inquire if it is necessary for separate elections to be held in both district No. 45 and in the adjoining territory.

I invite your attention to paragraph 235 et seq. of the School Code of 1924. Under the law in such cases provided, the county board petitions the commissioner's court to call an election in each of the districts concerned. The proposed rate and time shall not be less than the maximum rate in any district or the maximum time in any district. After the petition has been filed with the commissioner's court, that court calls an election in each and all of the districts concerned, in a manner prescribed by sections 227 and 229 of the School Code. If a majority of the qualified voters in either one of the districts whose boundaries are demarked as shown by you, should vote against the proposed consolidation, then said consolidation shall not be made and each district shall remain as before, and with the same taxing privileges.

The provisions of the School Code heretofore referred to should be strictly followed.

I am of the opinion that, under your statement of facts, you should hold an election in the High Point district and a separate election in the adjoining territory, and that no one can vote on the tax election in either of the districts who does not live within the boundaries of the particular district concerned.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Copy to:
Department of Education.

March 18th, 1927.

Hon. John F. Williams,
Tax Collector, Calhoun County,
Anniston, Alabama.

Dear Sir:

This acknowledges receipt of your letter of March 15th in which you write as follows:

> "Kindly advise me early as possible if the "Denson Law" passed by the recent legislature authorizing the County Board of Revenue to exempt new industries from the payment of county and municipal taxes for a

term of years is applicable also the three mill county school tax and the three mill district tax, one or both along with the other taxes."

In reply will say that in my opinion Senate Bill 149 which you refer to as the "Denson Law" does not have the effect of remitting the three mill county school tax and the three mill district school tax levied as provided by the amendment to the Constitution. These taxes stand on a different basis from all other county taxes. The constitutional provision with reference to the three mill county school tax and the three mill district school tax are delegations of power to such counties and districts to be exercised in a particular way. I do not think that the Legislature could remit any part of this tax as it has been levied in the manner provided by the Constitution. After such tax has been levied in my opinion, it would have to be collected and used as provided by the constitutional amendment. The constitutional provisions with reference to other county taxes consist only of limitations placed upon the Legislature in granting to counties the power to tax. These taxes doubtless may be remitted by legislative Act or by authority of legislative Act given to the Court of County Commissioners.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 18th, 1927.

Hon. D. C. Mathews,
County Superintendent of Education,
Grove Hill, Alabama.

Dear Sir:

Your letter of March 17th received. You inquire whether you can purchase a typewriter for the office of the County Superintendent of Education with public school funds or whether same should be purchased and paid for by the Commissioner's Court of your county.

Your attention is invited to paragraph 137 of the School Code of 1924, which makes it the duty of the Commissioner's Court to furnish you with office equipment and stationery. There is no other law specifically applying to your office in this regard.

I am of the opinion that you cannot use school funds for the purpose of purchasing a typewriter for your office but that you should make requisition to the Commissioner's Court for said typewriter and if the Commissioner's Court fails or refuses to furnish you with one, in such event, your only recourse would be to start legal proceedings against the Commissioner's Court.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

March 21st, 1927.

Hon. A. V. Meigs,
County Superintendent of Education,
Dadeville, Alabama.

Dear Sir:

Your letter of March 19th received. You state that in 1925, three school districts in your county consolidated and voted a special three mill district tax for general school purposes. You also state that you wish to purchase a site for the school building. You inquire if it is legal for the County Board of Education to purchase the land and pay for it out of the three-mill tax accruing to the consolidated district.

Where special three mill district tax is voted for **general** school purposes, the use to which said tax may be put is governed by the rules and regulations established by the Board of Education (Paragraph 211, School Code). The district tax must be used for the exclusive benefit of the public schools of the consolidated district in which levied and collected (Paragraph 244 School Code). I assume when the three districts mentioned by you voted to consolidate that Paragraph 235 et. seq. of the School Code were strictly followed. The title to the land which you propose to buy must be vested in the County Board of Education (Paragraph 85 and 86 of the School Code). Under Paragraph 106 of the School Code, the County Board has authority to purchase real property. Under Paragraph 124 of the School Code, the site on which you propose to erect the building cannot be purchased without the **written** recommendation of the County Superintendent of Education, which fact should appear specifically in the minutes of the County Board of Education, which you are required to keep.

Under Paragraph 241 of the School Code the County Board of Education may issue warrants or district tax to "erect, repair, enlarge or equip school buildings or to make improvements of the school facilities of any school district under its control * * *."

I assume that you intend to purchase the land without issuing the warrants therefor. I am of the opinion that Paragraph 241 of the School Code would not authorize a County Board of Education to issue warrants over a period of years for the purchase of land on which to erect a school building, but that this paragraph of the School Code has application only where the land has been purchased and it is the desire to make some permanent improvements on said land.

As stated above, with the qualifications mentioned, I am of the opinion that you may purchase the land with district tax.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 23rd, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

Your letter of March 21st received. You inquire if a public school may legally collect an incidental fee from each of its pupils.

While this is a question which primarily concerns officers of the county who are in charge of the local school system, nevertheless inasmuch as it is a question which is of general interest in every county, and assuming that in propounding it, you are doing so officially, I am rendering this opinion to you, and am sending a copy of it to the County Superintendent of Education of your county for his official information.

Paragraph 141 of the School Code provides for a Board of School Trustees for each elementary public school. Under the general law these trustees are appointed by the County Board of Education (par. 107 School Code) they serve without pay and are subject to removal by the County Board of Education at will. Under paragraph 99 of the School Code, on the request of the Board of School Trustees, the County Board of Education may fix a reasonable incidental fee to be collected in said school. Paragraph 146 of the School Code states that the Board of School Trustees, with the approval of the County Board of Education, may **fix** a reasonable incidental fee to be paid by each pupil entering the school. On first impression it would appear that there is an incompatibility between the provisions of these two paragraphs of the School Code. However, I am of the opinion that the intention of the Legislature was that the Board of School Trustees should make request upon the County Board of Education for permission to collect an incidental fee in the school of which they are trustees and that the determination as to whether or not a fee should be collected and the amount thereof, is a matter within the control of the County Board of Education. In other words, if, having requested permission to collect a fee, the trustees are refused permission by the County Board, obviously they could not collect the fee. Incidental fees legally collected are not paid into the County School fund but are collected by the principal teacher of the school and are disbursed by him on the order of the local trustees (par. 143 School Code).

Though you did not specifically ask the question, in view of the fact that your letter must necessarily involve it, I may state also that I am of the opinion that where incidental fees are collected in a public school, it is contemplated that such fees shall be used solely for the incidental expenses incurred in and about the school. This would not include payment of salaries of teachers nor traveling expenses of teachers nor could any part of the incidental fees be used for payment of any expense account of a local trustee purely personal in nature. Ordinarily incidental fees are used for providing fuel, light, heat, water and making minor repairs on the school.

You will observe that paragraph 99 of the School Code specifically provides that where an incidental fee is authorized to be collected, such fee shall not operate to exclude from the school any pupil between the ages of 8 and 16 **during the compulsory attendance period.** The compulsory attendance period is fixed by paragraph 257 of the School Code. Under that provision of law

the compulsory attendance period commences at the beginning of the school unless otherwise ordered by the County Board, **with the approval of the State Board of Education.** The County Board may reduce the compulsory attendance period to not less than one hundred school days for any individual school, unless the school term for the particular school is already less than one hundred days. In which later event the period of compulsory attendance must be for the entire school term. Ordinarily where no change is effected the compulsory attendance period for a particular school extends the full time the school is in session **with public funds.**

The general effect of the law with relation to the collection of incidental fees is simply this: The County Board may authorize local trustees to collect such a fee and they may then collect it, but if a child within the class above mentioned does not pay the fee there is no recourse during the compulsory attendance period so far as the child is concerned. However, even if the child fails or refuses to pay the fee during the compulsory attendance period and demand is made upon the parent and the parent also fails or refuses, and it appears to the court before whom the case is properly brought that the parent is able to pay the fee, he (the parent) may be compelled to do so, although during this time the child cannot be excluded from the school. This, however, would be a matter which would concern the County Board of Education upon information from the local trustees who, under paragraph 107 of the School Code work under the County Superintendent of Education.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 25th, 1927.

Hon. Harry K. Martin,
Judge of Probate,
Houston County,
Dothan, Alabama.

Dear Sir:

This is to acknowledge the receipt of yours of March 21st.

You inquire whether or not it would be legal for a court of county commissioners to constitute three members of the court as purchasing agents for your county. It is contemplated that these members of the court of county commissioners, as purchasing agents, receive compensation for their services as such purchasing agents.

In the opinion of the writer the practice you mention would be prohibited by Section 5024 of the Code of 1923. This section provides that no member of the court of county commissioners may take any contract for work or services for the county, either as a principal or agent, nor can he, in any wise, be pecuniarily interested in any such contract.

I think the above referred to section answers your inquiry.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 28th, 1927.

Hon. W. H. Ward,
County Commissioner,
New Brockton, Alabama.

Dear Sir:

I have your letter in which you request that I advise you if it would be possible for Coffee County to levy a tax on gasoline stations, based on the number of gallons of gasoline sold by them, provided no tax is levied on any station other than those located outside of the town limits of the several towns of the county. You further state that if such tax can be levied it will be known as a county school tax or a district school tax.

Our Supreme Court, in the case of Phoenix Carpet Company v. the State, 118 Ala. 143, held that counties have no inherent power of taxation, and that they have only such powers as are delegated to them and must have express authority of law to sanction the taxes they demand.

The opinion of the Supreme Court of Alabama in the case of Mills v. Court of Commissioners of Conecuh County, 85 So. 564, contains the following:

> "Cities, incorporated towns, and counties have such power of taxation as is delegated to them by legislative authority (Phoenix Carpet Co. v. State, 118 Ala. 143, 22 So. 627, 72 Am. St. Rep. 143); and the legislative power to regulate the subject of taxation is unlimited, except so far as that department may be restrained by the state or federal Constitution (Hare v. Kennerly, 83 Ala. 608, 3 So. 683; Capital City Water Co. v. Board of Revenue, 117 Ala. 303, 23 So. 970).

You will observe from the above opinions that counties do not have authority to levy any taxes other than those which are authorized by law.

I have been unable to find any law, either general or special, which authorizes the levy of a tax, such as is described in your letter, in Coffee County.

In view of the above and in view of the fact that the Attorney General rendered an opinion on June 29, 1925, to the effect that a county cannot levy a tax on the sale of gasoline in the absence of Legislative authority, it is my opinion that Coffee County cannot levy the tax which you referred to in your letter to me.

Trusting that the above is the information which you desire, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

March 28th, 1927.

Hon. J. A. Carnley,
Judge of Probate,
Elba, Alabama.

Dear Sir:

I have your letter of March 16th, in which you ask whether or not the county is liable for legal notice of a primary election which is published by order of the chairman of the State Executive Committee.

The Code of 1923, section 605, provides the time for holding primary elections, and said section further provides that the state or county shall not be liable for the expense of any primary elections which are not held on the dates specified.

The Code of 1923, section 609, provides that the expenses of primary elections shall be paid in the same manner and to the same extent as is or may be provided by law for the payment of the expenses of a general election held under the laws of Alabama.

The Code of 1923, section 611, provides that the State Executive Committee may enter a primary by giving notice in a newspaper and that said notice must be published at least once a week for three weeks.

In view of the above and in view of the fact that the Attorney General rendered an opinion on March 14, 1927, in which he held that the county is liable for the expense of the publication mentioned in your letter, I advise you it is my opinion that you are authorized to pay the same.

Trusting that the above is the information which you desire, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 5th, 1927.

Hon. William L. Harrison,
Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

I have your letter of March 9th in which you request my opinion on the following questions:

1. Is a person who is hired as a chauffeur for a private automobile required to pay chauffeur's license?

2. Must the drivers of all commercial motor vehicles, such as ambulances, hearses, taxi-cabs, jitney busses, trucks carrying freight for hire, etc., pay a chauffeur's license?

3. Are drivers of motor trucks which are not used for general commercial purposes but which are used for the particular business of the owner required to pay a chauffeur's license? As an example, would the driver of a furniture delivery truck which is operated solely for the purpose of delivering furniture sold by a furniture merchant, be required to pay a chauffeur's license?

The Acts of 1923, page 285, Section 9, is as follows:

"'CHAUFFEUR.' An operator who directly or indirectly receives compensation for operating a motor vehicle on the public highways. This definition shall not be deemed to include manufacturer's agents, proprietors of garages, and dealers, salesmen, mechanics or demonstrators of motor vehicles when driving vehicles in any such capacity."

You will observe from the above section 9, that the agents of manufacturers of motor vehicles, proprietors of garages and dealers, salesmen, mechanics or demonstrators of motor vehicles when driving vehicles in such capacity are exempt from paying a chauffeur's license, while according to the provisions of said Section 9, every other operator, who directly or indirectly receives compensation for operating a motor vehicle on the public highways must pay a chauffeur's license.

The Acts of 1923, page 292, Section 25, is in part as follows:

"* * * * Provided that the provisions of this section shall not apply to an owner of a motor vehicle for private use or any member of his family or other person authorized by him and otherwise qualified under the provisions of this Act; provided that such owner shall be liable for any negligent or wilful injury inflicted by any such person authorized by him, but the same shall apply to the owner of the motor vehicle for public use."

The Acts of 1911 and the Acts of 1919 contain the provision which I have just cited from the Acts of 1923, Section 25.

The opinion of our Supreme Court in the case of City of Montgomery et. al. v. Orpheum Taxi Company, 203 Alabama Report, page 103, contains the following:

"* * * * The effect of the provision of the State law for the licensing of chauffeurs affirmatively restricts the requirements for the licensing of such drivers to those only who drive automobiles for hire for public use, excluding from the exaction 'chauffeurs' who drive automobiles devoted to private use."

In view of the above and in view of an opinion which was rendered by the Attorney General to Hon. F. C. Marquis, Associate Member of the State Tax Commission, on October 19, 1923, it is my opinion that every person who is employed to drive a motor vehicle in this state and who receives compensation therefor, excepting the agents of manufacturers of motor vehicles, proprietors of garages and dealers, salesmen, mechanics, or demonstrators of motor vehicles when driving the vehicles in any such capacity, must pay a chauffeur's license, provided said motor vehicle is one which is put to public use, and that no person, who drives a motor vehicle which is devoted to private use, is required to pay a chauffeur's license, even though he may receive compensation for such service.

Trusting that the above is the information which you desire, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 7th, 1927.

Hon. Thos. D. Brooks,
County Superintendent,
Hamilton, Alabama.

Dear Professor:

I have your letter of the 29th asking for a copy of my ruling to the effect that special three mill district tax must be used before paying teachers from the emergency fund.

I am fearful that you have misunderstood the effect of my several rulings on the subject. The situation is simply this:

> Where district tax is voted in a district for general school purposes the use to which it may be put within said district is made within the discretion of the County Board of Education, so long as devoted to a lawful purpose.

Under the Act providing the emergency school appropriation of $600,000, a part of which was appropriated to your county, it is contemplated that no part of said emergency appropriation be used until the County Board has exhausted other state funds, county one-mill and county three-mill taxes, district taxes and donations going to the schools for the payment of salaries of teachers therein. This does not mean that it is compulsory that you **use any part** of the district tax for the payment of the salaries of teachers and it does not mean that you must use **any part** or **all** of the county three-mill tax for such purposes. As you well know, the County Board of Education is vested with discretion in the apportionment of county three-mill and district taxes. Such taxes need not **necessarily** be used for payment of salaries of teachers, but in practice it is common for county boards to make budgets allocating a certain amount of the district tax for payment of such salaries. The unallocated parts of such taxes are generally used for payment of warrants and other general expenses, and the effect of the law relating to the emergency school appropriation does not require that you use all of your county three-mill tax or all district taxes before you can use the emergency fund. In other words assume that total collections from county three-mill tax are $30,000 per year and that total collections from district tax in District No. 1 for general school purposes are $500. If you have warrants outstanding against your county three-mill tax, the law requires that you set aside enough of the $30,000.00 to take care of those warrants. If you have bills due against the district tax, the law contemplates that you pay those bills. When you have budgeted on each of said taxes with regard to such items and have set aside that amount out of such taxes which you intend to use for the payment of salaries of teachers, **and have accordingly expended such taxes** for the purpose mentioned, then **and not until then** can you proceed to use the emergency school appropriation. You can readily see why this is so, because until you have exhausted all funds, state, county, district and local donations you cannot say how much of the emergency school appropriation will be necessary for any particular school to run it one hundred and forty days.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 7th, 1927.

Hon. S. H. Smith,
Circuit Court Clerk,
Mobile, Alabama.

Dear Sir:

I acknowledge the receipt of your letter of March 31st.

You want to know whether or not a circuit court clerk is entitled to deduct five per cent commission, under sub-section 16, of section 6724, Code of 1923, from money received from the convict fund in compliance with section 3670 of the Code of 1923.

It is my opinion, and you are so advised, that sub-section 16, above referred to, confines the five per cent commission to fine and forfeitures, and that, therefore, you could not legally charge this commission on funds coming into your hands under the operation of section 3670. (See opinions of Attorney General, 1925, page 27.)

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 8th, 1927.

Hon. A. H. Sheppard,
Clerk Circuit Court,
Anniston, Alabama.

Dear Sir:

Your letter of April 2nd received.

You state that the county convicts of Calhoun County, under an Act approved February 18, 1927, are to be turned over to the State on June 8, next.

You desire to know what steps you should take, as hard labor agent of the county, to comply with this order.

Section 3 of the Act above referred to specifically answers your inquiry. This section reads as follows:

> "Section 3. The Courts of County Commissioners, Boards of Revenue, or other like bodies of the several counties of the State, may hereafter, and are hereby authorized and empowered to, deliver to the State Board of Administration all county convicts heretofore sentenced to hard labor for the county, or who may hereafter be sentenced to hard labor for the county, **in like manner as now provided by law for the delivery of State convicts to the State Board of Administration.** The State Board of Administration shall receive said county convicts in the same manner as they now receive State convicts, and shall pay to the proper county authorities the items of costs provided in Section 3667 of the Code of Alabama as now provided by law. Provided, however, that where these items of costs have been paid to the proper officers for the convicts now serving their sentence, the same shall not again be paid."

You are therefore advised, that you are authorized to transfer the county convicts by the same method, manner and form as you have been transferring state convicts to the State Board of Administration.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 8th, 1927.

Hon. J. N. Mullins,
Solicitor,
20th Judicial Circuit,
Dothan, Alabama.

Dear Sir:

I acknowledge receipt of your favor of March 28th, which reads as follows:

"In your opinion dated January 21st, 1927, to Hon. G. H. Howard, Probate Judge of Elmore County, who asked whether or not the County may legally pay office rent for the county solicitor, circuit solicitor and circuit judge where there is no suitable space for them in the court house and where they are residents of such county, you stated: 'I find no express authority of law which would permit the county to make the expenditure inquired of by you, and I do not think that such authority can be said to arise by necessary implication.'

"Since this opinion the Legislature amended Section 6755 of the Code of 1923, subdivision 1 of said section rather, which Act was approved February 18, 1927, and now I would like to know whether or not the county may legally pay the office rent of its solicitor where they are residents of the county site and where the court house is inadequate to supply office rooms for such officers."

The amended section, above referred to, reads as follows:

"Section 1. That subdivision 1 of Section 6755 of the Code of 1923 be amended so as to read as follows: To direct and control the property of the county as it may deem expedient according to law, and in this direction and control it has the sole power to locate the courts in the rooms of the courthouse and to designate the rooms to be occupied by the officers entitled to rooms therein, **including the circuit judge, if resident in the county,** and to change the location of the courts, and the designation of the rooms for officers, as it may deem best and most expedient; and this shall be done by order of the court entered upon the minutes of the court at a regular term of court. **In the event the courthouse is inadequate to supply office rooms for such officers, the court may lease such office rooms in a convenient location in the county site and to pay the rental from the county funds."**

I do not find a provision of law, either in the amended section, the original, or any other statute, which authorizes the court of county com-

missioners to pay the office rent of the Circuit Solicitor or County Solicitor where said solicitors are residents of the county, and where the courthouse is inadequate to supply office rooms for such officers.

You will note that the amended statute provided for Circuit Judges, but is silent as to solicitors. Under the amended section, the court of county commissioners is authorized to "lease such office rooms for such officers," that is, those who are legally entitled to rooms in the courthouse. I do not find anywhere, where solicitors are entitled as a matter of right to offices in the courthouse.

Of course, if there is sufficient room in the courthouse to provide the solicitors with office room, it would be proper so to do and would not offend against any statute. But there is no provision of law for the leasing of such office room.

Where public funds are expended, an expenditure can legally be made only when expressly authorized by statute.

State Auditor v. Tax Collector, 187 Ala. 606, 65 So. 519.

You are, therefore, advised that the expenditure concerning which you inquire, would not be a legal charge.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 9th, 1927.

Hon. T. E. Buntin,
Judge of the Court of Common Pleas,
Dothan, Alabama.

Dear Sir:

I have your letter of April 7th, concerning section 1954 of the Code of Alabama.

I am of the opinion that the police are authorized to make arrests within the police jurisdiction of any municipality for the violation of any valid, subsisting ordinance of said municipality.

The recorder has final jurisdiction over such cases to the extent of imposing fines or sentences.

With regard to your inquiry concerning the authority of the police to search without search warrants, I am of the opinion that they have no such authority. Your attention is directed to previous opinions rendered by me on this subject. See also Section 5 of Article 1 of the Constitution of Alabama and the enabling acts pertinent thereto.

In Alabama the ruling is that where a search has been made without a warrant, and evidence obtained, that evidence is admissible and a conviction may be predicated thereon.

Banks v. State, 207 Ala. 179, 93 So. 293, 24 A. L. R. 1359.
Chastang v. State, 83 Ala. 29, 3 So. 304.
Shields v. State, 104 Ala. 35, 16 So. 85.
Scott v. State, 113 Ala. 64.

I am of the opinion that under section 1954 of the Code the city police have authority to go outside the corporate limits of a city, but within the police jurisdiction thereof, and seek offenders of city ordinances, without having had previous information as to an offense being committed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 20, 1927.

Hon. L. H. Brassell,
Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

You write as follows:

"We are in receipt of the following letter from one of our agents:

"'Kindly inform me whether or not a merchant who went into business about June 1st of last year would be liable for 1926 taxes, and if so for what part of a year. I have a case of this kind and cannot be sure as to whether or not he should be taxed for a portion of last year'."

In reply to your inquiry will say that where a person went into business about June 1, 1926, he was not taxable on his stock of goods until October 1, 1926, for the tax assessment year beginning on that date. Subdivision D of section 12 of Allen's Compilation of Tax Laws reads as follows:

"All stocks of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, but the amount so assessed shall in no case be less than the capital actually employed in the business * * * and shall include goods, wares, and merchandise offered for sale by any person commencing business subsequently to the first day of October of a current year, but in such case the tax shall be apportioned according to the date at which the business was commenced, so that if commenced after the first day of January, the tax shall be three-fourths of the tax for the whole year; if commenced after the first day of April the tax shall be one-half of the tax for the whole year * * *. If the person, association or corporation carrying on such business shall fail to make return of the amount of stock as provided by law, or if the county tax assessor is not satisfied with the return made, in order to make proper assessment, he shall have the right to demand a copy of the last inventory made of such stock of goods, and may also by inquiry of persons believed to have knowledge of the subjects, obtain information as to the probable average amount of such stock, and from such information may assess the same upon his best judgment."

It will be noticed that the assessment for any tax year is based upon the average amount of stock on hand for the preceding year. It will also

be noticed that persons are required to give in their property for assessment at some time between October the first of a tax assessment year and the first day of January following. The first assessment made against a merchant who goes into business is made as of October the first of the tax assessment year in which he goes into business, and is based upon the average amount of capital stock carried by him during the preceding year. It is, therefore, my opinion that a person who went into the mercantile business about June 1, 1926, was under no necessity of law to return his capital stock for taxation until the following October, and then the assessment is made as provided in the quoted part of section 12. In such a case the time between June the first and October the first constitute the preceding year and the tax assessed should be on one-half the value of the average amount on hand during said period and not less than one-half the capital actually employed. In other words, the time elapsing between the date of commencing business and the first of the next October is considered for the purpose of assessment as of October the first as the preceding year of business or part of such year. The statute does not mean that he shall be assessed as of October the first of the year in which he ended business, but as of October the first of the year succeeding the time that he ended business, and in determining the value of the stock of goods, you estimate as follows: take the average amount of stock during the period of time he was in business prior to October the first, if he began before January the first preceding, such date of assessment the whole year is to be calculated and the average amount for the whole time must be considered. If after January the first but before April the first three-fourths of such amount should be used as the basis for taxation. If after April the first, then one-half of the amount should be used. In considering a stock of goods for the purpose of assessment, you are considering conditions of the preceding year or part of year. It, therefore, follows that no assessment of the stock of goods can be made in the tax assessment year in which the merchant goes into business.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 21st, 1927.

Mr. Grady Kelly,
License Inspector,
Geneva, Alabama.

Dear Sir:

This acknowledges receipt of your letter of April 11th. You make the following inquiry:

> "Is a man liable in Geneva County under this schedule for a separate license for each incorporated town in the county or will county licenses of $10.00 for the State enable him to post in all the county including incorporated towns."

The foregoing question is asked with reference to schedule 17 which is found in Allen's Compilation of the Revenue Laws of 1923.

In reply will say that it is my opinion that a separate license is required for bill posting in every incorporated town or city within your county, $10.00 for the State and $5.00 for the county. Under this schedule a person may pay $500.00 to the State for a license and post bills anywhere in the State without the payment of any further amount and without the payment of anything to any county, but where the person has not paid this $500.00 to the State, he must pay a license in every incorporated town or city in which he does business in the amount named in the schedule. As I understand the matter you have no town in Geneva County of 7,000 population. Such being the case the license for bill posting in any town in your county would be $10.00 for the State and $5.00 for the county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 22nd, 1927.

Hon. Irby A. Keener,
County Solicitor,
Center, Alabama.

Dear Sir:

Yours of April 20th submitting the following proposition requesting this office for a ruling, received:

> "If 'A' be apprehended transporting contraband liquors, and the vehicle in which said liquor is being transported is seized and reported to me for condemnation as provided by law, 'B' comes in as claimant under mortgage executed to him for purchase price of car, and offers to pay the fair value of the vehicle, or equity in vehicle as the case may be, that value thereof may be applied in the manner provided by statute, do I have the authority to accept such fair value of vehicle, applying proceeds in the regular way and release the vehicle or not? Or should I file bill to condemn in every instance and try the issues in the case?"

I know of no authority of law for the State, through its solicitor, to make settlements of claims against automobiles, etc., which are sought to be condemned by the State under Sections 4778 and 4779 of the Code, when used in violation of the prohibition law in the transportation of liquors. Said sections read as follows:

> "4778. CONVEYANCES AND VEHICLES TRANSPORTING PROHIBITED LIQUORS OR BEVERAGES: ANIMALS, HARNESS, OR ACCESSORIES IN TRANSPORTATION THEREOF—All conveyances and vehicles of transportation of any kind, whether on the waters of the state, under the water, or on land or in the air, which have been or are used for the illegal conveying of any prohibited liquors or beverages into this state, or from one point in the state to another point within the state, including any animals that may be hitched to any vehicle so illegally used, together with all harness and other accessories employed in such illegal transportation, shall be contraband, and be for-

feited to the State of Alabama, and shall be seized by any sheriff or other arresting officer or any other person acting under authority of law in the enforcement of the prohibition laws of the state, who becomes cognizant of the facts, or who finds liquor in such conveyance or vehicle being illegally transported as aforesaid. And such officer or person shall report the seizure and the facts connected therewith to the solicitor or any prosecuting official in the county where seizure is made or in default thereof to the attorney general of the State.

4779. CONDEMNATION PROCEEDINGS INSTITUTED BY OFFICERS.—It shall be the duty of such officer in the county, or the attorney general of the state, to at once institute or cause to be instituted condemnation proceedings in the Circuit Court by petition in equity in the name of the state against the property seized, describing the same, or against the person or persons in possession of said vehicle of transportation, if known, to obtain a decree enforcing the forfeiture. No replevin or detinue writ may be employed to retake possession of such seized property pending the forfeiture suit, but any party claiming a superior right may intervene by petition in said suit, and have his claim adjudicated. The judge presiding in said circuit court or any division thereof, may superintenent and make all proper orders and orders of publication of notice to be published for all parties claiming the said vehicles to come in and assert their rights thereto. The said court shall have authority to frame all orders of procedure so as to regulate the proceedings that persons may have an opportunity to come in and propound their claims to the vehicles and conveyances sought to be condemned."

I am of the opinion that the state should use only its authorized agents—the courts—in handling these matters, and when this is done, no one can have cause to complain. However, I would suggest that it might be that after the bill for the condemnation of any machine has been filed in court, a consent judgment might be entered if in the judgment of the solicitor, he believes it to be a good case where settlement should be had. But in all cases there should be a decree of the court, setting out in full the agreement and the amount to be paid in settlement of the matter. Then, in such event, you will have a record that will be open to all interested parties showing just what has been the disposition of the particular case.

In my opinion ex parte settlements of these matters should never be had.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 22nd, 1927.

Hon D. A. Howard,
Clerk, Circuit Court,
Florence, Alabama.

Dear Sir:

I have your letter of the 13th in which you request an opinion as to whether or not a man who has been convicted of a felony in the Circuit Court and who has taken an appeal to the Court of Appeals must surrender himself to the Sheriff within fifteen days after the case has been affirmed unless he files a motion for re-hearing and has the certificate of affirmance recalled.

I find that an opinion was rendered by the Attorney General on April 4, 1921, to Hon. W. F. Feagin, which is in part as follows:

> "If, after notice of affirmance is sent down by the clerk of the appellate court to the clerk of the lower court, an aplication for rehearing should be applied for, and counsel filing such application should request and obtain a withdrawal of the certificate of affirmance, the convict is again restored to the status held by him before the notice of affirmance was sent down."

The Code of 1923, Rule No. 38 of the Supreme Court provides that without the order of the Court or a justice thereof, the pendency of an application for rehearing shall not stay or suspend the execution of the judgment of the court.

The above Rule No. 38 of the Supreme Court is applicable to the Court of Appeals.

In view of the above it is my opinion that one whose case has been affirmed by the Court of Appeals and who has filed a motion for re-hearing must surrender himself to the Sheriff within fifteen days from the date of such affirmance, if he fails to have the certificate of affirmance recalled.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 22nd, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

I am in receipt of your favor of April 20th requesting an opinion from this office relative to the following matter, which request is in the following words and figures:

> "Please advise me whether or not a daily newspaper in which a County published a notice for letting bridge contracts may charge more than one and one-half cents per word for the first insertion and one cent per word for each subsequent insertion where the notice was merely sent

to the paper and nothing said beforehand as to the price or in such case may they charge their advertised rates under Section 9262 of the 1923 Code?"

You will find by referring to Sections 1325 and 1361 of the Code of Alabama just the character of contracts that have to be advertised. These sections are as follows:

"Section 1325. Whenever it is proposed to do such work by contract and the estimated cost of such work exceeds five thousand dollars, the state highway department shall advertise for bids for at least thirty days in advance of the award of the contract in a newspaper published in the city of Montgomery and in a newspaper published in the county where the work is to be done, and in any other newspaper or periodical if the department deems such other publication necessary, and shall receive bids for all or part of said work and let the contract to the lowest responsible bidder."

"Section 1361. No contract where the estimated cost of the work shall exceed two hundred and fifty dollars shall be made except after advertisement for thirty days in some newspaper published in the county, describing the character of the work to be done and the time and place of letting, and then only to the lowest reasonable and responsible bidder for such work, who shall enter into bond in double the amount of such bid, conditioned for the proper performance of such contract according to the plans and specifications and within the time prescribed by the order of the court or board for such work, which bond shall be approved by the judge of probate for said county. Where the estimated cost of the work exceeds twenty-five hundred dollars, advertisement as above provided must also be made in a daily paper published in this state, of at least five thousand daily circulation once a week for thirty days. Such court or board shall have the right to reject any or all bids."

Not being advised as to the cost of the bridge the contract for which was advertised, I am unable to state just which of the above sections your proposed project would come under. If the estimated cost of the work exceeded $2,500.00, then it would come under section 1361 and the advertisement would have to be in the daily paper. Under section 9262 of the Code which reads as follows:

"Not more than one and one-half cents per word for the first insertion, and one cent per word for each subsequent insertion of a legal notice or advertisement must be charged or allowed; but in case it is advisable to advertise in daily newspapers, any person required to advertise such notice may contract with such papers to charge their current published commercial rates, and the insertion must not be oftener than once a week, unless in certain cases of sales under a decree of the circuit court in equity, the court shall otherwise order. Each amount or number expressed in figures and each initial letter shall constitute one word. The year, month, and day shall each constitute one word, in all three words.

In estimating the number of words in a notice, an appropriate caption may be included; but no memorandum of the printer must be included."

It could not appear but once a week and should of course appear on the same day of each week and the cost of the publication would come under the latter part of this section, where such publication is required in the daily paper, and the cost of such publication would be governed by the current published commercial rates. However, if this was published in a weekly paper, it would then come under the first part of section 9263, supra, and the rate would be one-half cent per word for the first insertion and one cent per word for each subsequent insertion.

Hoping this answers your inquiry, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 22nd, 1927.

Hon. W. L. Pratt,
Judge of Probate,
Centreville, Alabama.

Dear Sir:

Your letter of April 21st making the following inquiry of this office received:

"An old Negro man who lived in the corporate limits of West Blocton was found dead less than a quarter of a mile beyond the corporate limits. This old Negro was a pauper and I am writing to ask whether the county should pay burial expenses or the town of West Blocton. The town of West Blocton exercises police jurisdiction a mile and a half beyond the corporate limits."

I am under the opinion that under Section 2790 and 2791 of the Code of Alabama that the county would have to pay the expenses of burying the pauper referred to above.

Section 2790 reads as follows:

"RELIEF OF THOSE NOT ENTITLED TO A SETTLEMENT; BURIAL OF STRANGERS.— The court of county commissioners shall also relieve, support or employ paupers found or being in the county, though not entitled to a settlement therein, and in case of their decease, shall decently bury them, and the court shall decently bury all strangers dying in the county."

Section 2791 reads as follows:

"CERTAIN DEAD TO BE BURIED BY CORPORATE AUTHORITIES: The municipal authorities of every city, town, or village, shall bury all strangers found dead within their limits, or found floating in any river at a point adjoining the limits, and all expenses or charges shall be chargeable to the county; and an accurate account thereof shall

be reported to the Court of County Commissioners which shall allow the same, and order it to be paid out of the county treasury; but the court of county commissioners may fix maximum charges for such burials."

Section 2790 refers to paupers found or being in the county, not entitled to settle therein and says that the county, which of course means the board of revenue or commissioners court, shall bury all strangers dying in the county.

Section 2791, supra, states that the municipal authority of each city, town or village shall bury all strangers found dead within its limits, or found floating in any river at a point adjoining the limits of said city, and all expenses or charges shall be chargeable to the county. So in either event the city is relieved of all duties concerning those found dead within its limits except to see that they are decently buried and render the account to the county, through its commissioners courts or boards of revenue.

So I am of the opinion in construing the two sections together that it becomes the duty of the county to decently bury all paupers or strangers found within its limits whether found within the corporate limits of any city, town or village.

Hoping this answers your inquiry, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 22, 1927.

Hon. W. L. Harrison,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of April 15th, asking for a construction of schedule 125 of Allen's Revenue Code, page 221. You wish to know if this license is required of a stave mill.

In reply will say that I am not sufficiently acquainted with stave mills to give an opinion on the subject, but will say that if the staves are sawed and the capacity of a stave mill is estimated by the number of lumber feet it will saw per day, there is no reason that I can see, why the law will not apply to such stave mill. It seems that the legislative intent was that this schedule should apply to saw mills whose capacity is measured by the number of feet of lumber it will saw per day. There are a great many mills that saw wood which, in my opinion, are not saw mills within the meaning of this schedule. If a mill saws timber into lumber and its capacity is measured by the number of lumber feet it will saw per day such a mill is a saw mill within the meaning of said schedule 125 and a license tax should be paid for operating such mill.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

April 23rd, 1927.

Hon. L. B. Clark,
Clerk, Circuit Court,
Elba, Alabama.

Dear Sir:

Your letter of April 20th, making the following request for an opinion, has been received:

"A civil action is filed, judgment taken, and later garnishment proceedings are issued in an effort to collect the money on the judgment. Have I a right to collect trial tax in the garnishment proceedings and the original case too?

"Have I the right to charge tax in each case filed in this court where the action is based on one and the same cause, against the same defendant by the same plaintiff, for the recovery of the same sum when two or more different causes of action are filed?"

Section 4½, page 284, General Acts of Alabama, 1919, reads as follows:

"That a trial tax of three dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which hereafter goes upon the docket of any circuit court in this state, to be taxed and collected as other costs, and when collected, to be paid by the clerk of such court, into the general funds of the State Treasury."

There is no doubt that this section applies to all cases placed on the docket in the Circuit Court, whether original or whether it be a case growing out of the original suit. For instance, a suit in detinue is brought for the recovery of specific property. A claim for this property is interposed by a third party and it becomes necessary to try the rights of property between the plaintiff in the original action and the claimant. There is no doubt under the proper construction of this statute, that a tax of $3.00 is chargeable in the original case and also in the claim suit and this applies to all cases where any issue or cause has to be tried independent of the main or original suit. In other words, in all cases going upon the docket of the Circuit Court there must be collected a tax of $3.00. This applies to garnishments as well as in detinue cases.

Answering the second paragraph of your inquiry, I am of the opinion you should charge this tax. The law says this tax shall be imposed on each case, civil, criminal and in equity which goes on the docket.

Hoping this fully answers your inquiry, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 23rd, 1927.

Hon. L. P. Troup,
Judge of Probate,
Decatur, Alabama.

Dear Sir:

I have your letter of April 7th concerning the right of a clerk of a jury commission to draw $5.00 per diem as provided by Section 8587 of the Code of Alabama.

You are advised that under the Act approved August 31, 1909, the Clerk of the Jury Commission was entitled to $3.00 per day. The Code Committee revised this Act and the revision of the Code Committee is incorporated in our published Code, as Section 8587 thereof. The Code Committee raised the per diem from $3.00 to $5.00. The Code went into effect on August 16, 1924.

I am of the opinion that Circuit Clerks who are clerks of the Jury Commission under Section 8587 of the Code, are prohibited from drawing in excess of $3.00 per day during the term of office in which the increase was effected, which was August 16, 1924. (See Sec. 281 of Constitution.) However, if the clerk of the Commission is some other person than the circuit clerk, there appears no objection to his drawing the per diem fixed by Section 8587 of the Code, and this increase in compensation, so provided, should be paid from the date the Code went into effect, which was August 16, 1924.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 27th, 1927.

Hon. H. K. Martin,
Judge of Probate,
Dothan, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry of April 23rd, in which you write as follows:

> "We have had presented to us for record a deed given to 141st Field Artillery, Alabama National Guard. Please advise us whether we shall collect privilege tax on this deed."

This organization being an arm of the State government, it is my opinion that it was not intended to exact a tax of it for recording a deed made to it.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 28th, 1927.

Hon. W. H. Merrill, President,
Board of Revenue,
Columbiana, Alabama.

Dear Sir:

Your letter of April 27th has been received. You request an opinion as to the authority of the County Board of Revenue to purchase a cook stove for the sheriff.

In my opinion, the authority to purchase the stove is conferred by Section 4878 of the Code of Alabama.

On April 5, 1921, the Attorney General ruled that the purchase of fuel to be used in cooking and preparing foods for use in jails was legal.

Attorney General Report 1920-22, p. 144.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 28th, 1927.

Hon. C. F. Winkler,
Judge of Probate,
Greenville, Alabama.

Dear Sir:

Your letter of March 31st has been received asking the opinion of this office on the following matters:

> "Are the Probate Judges authorized to employ such assistants and clerical help and pay them five cents per name for all names that have to be checked or that have registered and who are not qualified voters; or is the pay limited for only those names which check out to be qualified voters?"

The Probate Judges of the various counties are authorized to pay the clerical help for making the qualified list for the various precincts of only the actual names of those who are qualified to go on this list, and are not authorized to pay for names only investigated.

Section 4027 of the Code of Alabama, provides in part as follows:

> "But the entire amount spent for such assistance and clerical help shall not exceed a sum equal to the amount obtained by multiplying the number of names on said list by five cents."

I am, therefore, of the opinion that the amount to be paid such clerical help is the amount ascertained by multiplying the names of those placed on the qualified list, by five cents.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 29th, 1927.

Hon. William L. Harrison,
Member State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of April 28th in re: License for the operating of filling stations. You write as follows:

> "The Union Oil Company of Union Springs owns a filling station known as the Union Service Station of Union Springs and this company has taken out and paid license for the operation thereof. They have employed or agreed with a Mr. E. S. Burns to operate this filling station for them as their agent on a percentage basis, he receiving a percentage of such sales as may be made on gasoline and oil."

You ask if, under the facts stated, Burns will be required to take out a license. In reply will say that it is my opinion that, if the filling station business is owned and operated by the Union Oil Company of Union Springs —if, in fact, said filling station business is the business of said company, it is immaterial by what method they run it or how they pay their employee. The company having taken out the license for said filling station, under such facts, it would not be necessary for the employee, Burns, to take out any license for said filling station.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

April 30th, 1927.

Hon. W. L. Harrison,
Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of March 31st in which you make the following inquiry:

> "First. If the license taken out by the owner of the machine is sufficient compliance with Schedule 73, Revenue Act 1919, which, in the latter part thereof provides 'that the license shall be due and payable by the person, owner or proprietor of the establishment, store or place of business in or at which said slot machine is located.'
>
> "Second. If the payment of the license by the owner of the machine is sufficient, would any additional license be required if the machine should be moved to a different place in the same town?"

In reply to your first inquiry will say that the license must be issued to the party named in the Schedule and that license issued to any other person than the person named in the Schedule would not exempt such party from

taking out a license. The license must be to the person, owner or proprietor of the establishment, store or place of business in which or at which such slot machine is located.

In answer to your second inquiry will say that it is my opinion that when the machine is moved to another location in the same town or city and placed in the establishment, store or place of business of a person, owner, or proprietor other than the one to whom it was first issued, a license would be required. If the person, owner or proprietor of the establishment, store or place of business, moves their place to another location in the same city, it is my opinion he may take the slot machine with him and place it in the new place of business without the payment of an additional license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 2, 1927.

Hon. W. B. Riley, County Superintendent of Education,
Macon County,
Tuskegee, Alabama.

Dear Sir:

I am in receipt of a letter from the local Board of Trustees of Hardaway District No. 4 dated April 29, 1927, inquiring whether or not the special three mill district tax of that district may be used for the purpose of transporting children from that district to another tax district. Inasmuch as school trustees have no official control over the receipt or expenditure of public school funds, I am not permitted to render an official opinion to them concerning the matter, and, therefore, I am addressing this communication to you and sending them a copy thereof.

The facts as stated to me are that a special three mill district tax was voted in Hardaway District No. 4 for a period of four years, beginning September 30, 1925, "for public school purposes **in said district.**" It appears that, adjacent to District No. 4 at Downs, Alabama, there is a small community which has no district tax. It also appears that Shorter District No. 28 has a district tax, and adjoins District No. 4. I am informed that the county board of education of Macon County furnished bus transportation to the Downs community and to the Shorter District, apparently from general fund appropriation, through the seven month school term, and that after State and County School funds were exhausted, the question arose as to whether or not the county board of education could use the special three-mill district tax of Hardaway No. 4 for the purpose of transporting children from the Downs community to Shorter District No. 28.

You will observe that Section 3 of the Special School Tax Amendment (p. 18, School Code 1924) requires that special three mill district tax be expended "for the exclusive benefit of the district, **as the law may direct.**" By reference to Paragraph 244 of the School Code, 1924, you will observe that **the law has directed** that the county board of education use district tax "for the exclusive benefit **of the public schools of such district.**"

In my opinion the law as written prohibits the use of district tax of one district for the transportation of children from that district to another district. I find that on February 5, 1926, Hon. Chas. H. Brown, Assistant Attorney General, rendered an opinion in which he used the following expression:

> "While the provisions of the Constitution are broad enough to permit the Legislature to enact laws permitting the application of special school district taxes in the manner you inquire about, the Legislature has seen fit to limit the application of such funds to 'the exclusive benefit of public schools of such district.' We find no authority either in the original act or amendments thereto, for the diversion of funds from one district to another.
>
> "The application of funds you indicate could be justified as benefiting the district from which the tax was levied on the ground that it was applied to the pupils of that district, but its diversion to another district violates the provision that it shall be used for the **exclusive benefit** of the district from which it was levied. It is our opinion that district tax funds may not in part be transferred from one district to another."
>
> (Opinions Attorney General, January 4 to September, 1926, Vol. 1, page 58, Office File.)

Some time ago, an opinion was rendered by Mrs. Edwina Falkner, then Assistant Attorney General, to the effect that the district tax of one district might be used in transporting children from that district to a school in another district. She arrived at this conclusion, apparently on the broad limitation of the constitutional amendment alone, and overlooked the specific limitation carried in Paragraph 244 of the School Code of 1924.

If there were no other limitations than that the district tax should be used for the exclusive benefit of the district, it might be that use of that tax for the transportation of children from that district to another district would not be violative of the law, but it so happens, that, carrying out the provisions of the special school tax amendment, which uses the expression "as the law may direct" the Legislature passed an Act further limiting the use of district tax to "the public schools of the district" in which levied and collected. This was an enabling Act carrying into full effect the special school tax amendment, and, in my judgment, expressed clearly the will of the people that district tax be used only in and on the public schools of the district in which levied and collected.

The above quoted expression from Mr. Brown's opinion expressed in part a correct view of the law, but he failed to give emphasis to the fact that there were two limitations instead of one on the use of district tax. The first limitation is that the district tax shall be used for the exclusive benefit of the district. The second limitation is more specific and requires that it be used for the exclusive benefit of the **public schools** of the district.

Under the law as written, I am of the opinion that district tax must be used exclusively for those public schools which are located or may be located within the tax district in which the tax is collected.

Mrs. Falkner's opinion, in my judgment, was incorrect for the reason that

she overlooked the fact that a school is an entity and not a part thereof. A public school is a collection of pupils under the jurisdiction of a qualified teacher, and if there are thirty pupils in that school, then it is perfectly evident that only a part of the children do not constitute the school.

I, therefore, withdraw all opinions contrary to this which have heretofore been rendered by this office and hold that special three-mill district tax can only be used for the exclusive benefit of public schools which are or may be located within the district in which the tax is voted, except where there may be specific provision of law for use otherwise.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Hon. C. A. Davis,
Hardaway, Ala.
Hon. Chas. E. McCall,
Capitol.

May 4, 1927.

Hon. G. P. Butler,
Judge of Probate,
Opelika, Alabama.

Dear Sir:

This acknowledges receipt of your letter of April 28th in regard to a mortgage filed for record on the Chattahoochee Valley Railway line running from Bleeker, Alabama, to West Point, Georgia, to the American Trust Company. In reply will say that if the second mortgage is given simply as additional security to the first mortgage or secures the same debt without any change in the amount of the debt or the time of payment, then no filing tax is required. This provision of the law you will find in subdivision of Section 4½ of the Revenue Act, 1923, Acts 1923, page 157. This provision is in words as follows:

> "(d) The privilege taxes required by law to be paid on mortgages, deeds of trust and similar instruments shall not be required on or for the filing of any such instrument, providing additional or substituted security for any indebtedness secured by an instrument previously filed, upon the filing of which the taxes provided by law have been paid or which was filed at a time when no such privilege taxes were required by law, provided the secured indebtedness remains unchanged in amount and in time of maturity."

You will find also under subdivision (f) of said section, Acts 1923, page 158, that if the time of payment of the indebtedness secured by any mortgage is extended or renewed and the extended or renewal contract is offered for record, the tax required in the section shall be paid on the amount of the indebtedness so extended or renewed. So you see, it all depends upon whether or not the time of the payment of the debt secured by the first

mortgage has been changed in the second mortgage, or the amount of the debt secured. If the second mortgage is simply to secure the same debt payable at the same time as in the first mortgage, then there is no filing tax upon the second mortgage given as additional security.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 4, 1927.

Mr. W. H. Gullatt,
Tax Collector, Jackson County,
Scottsboro, Alabama.

Dear Sir:

This acknowledges receipt of your letter of April 30th. In reply will say that neither a tax collector nor his deputy nor a deputy sheriff acting for the tax collector can go into another county and make a levy on personal property for the purpose of collecting delinquent taxes. The method by which you must proceed in such a case is clearly set out in Section 223 of the Act of 1919. Acts 1919, page 348. When the bill for the taxes is properly made out and properly certified by the Judge of Probate you send it to the tax collector of the county in which the tax payer has personal property and the tax collector of that county is required under the law to make the levy and collect the taxes, and return the taxes to you when collected. If he fails in this duty he is liable on his bond for such failure.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 5, 1927.

Hon. J. E. Hudson,
County Superintendent of Education,
Elba, Alabama.

Dear Sir:

I am in receipt of your letter of May 3rd asking an opinion from this office as to authority of county boards of education to borrow money to pay outstanding indebtedness, and to borrow additional amounts for current expenses and for teachers' salaries, when request is as follows:

> "We have an outstanding indebtedness of $6,120.00 incurred about 1920 by the county board of education of this county, and it has been renewed from year to year by mutual agreement with the one who holds the security. However, at this time he is anxious to secure payment. The man who has agreed to advance the county board the money to further extend the indebtedness wishes a ruling from your office on the validity of the proceedings. I might state that this debt was incurred for the purpose of paying teachers' salaries and current expenses.

"We also wish to borrow from this same man an additional amount of $7,000.00 for current expenses and teachers' salaries this year, and pay the whole $13,120.00 back in three equal yearly installments with interest at 6 per cent, and the county three-mill tax collected for the years these installments come due to be pledged for the payment of the same."

The answer to your first inquiry is dependent upon the construction of Section 110 of the School Code, which is as follows:

"The County Boards of Education of the several counties of this State may borrow money for the purpose of paying the debts incurred or created by such boards respectively, which are unpaid, and such as may be incurred or created to the 1st day of October, 1923, and may issue warrants therefor, bearing interest at a rate not to exceed 6 per centum per annum, and payable at such time as the board may fix, or may use such warrants in the payment of such debts; such warrants to be payable out of any school fund of the county issuing the same."

I am of the opinion and so advise that the county board of education of your county may borrow money for the purpose of paying debts incurred or created by your board, which are unpaid, as referred to in your letter, provided the debts were incurred or created prior to October 1, 1923, and that your board may issue warrants therefor, bearing interest at a rate not to exceed 6 per centum per annum, and payable at such time as the board may fix, or may use such warrants in the payment of such debts, such warrants to be payable out of any school fund of the county issuing the same, subject to constitutional and statutory limitations on the use of special funds.

The answer to your second inquiry is dependent upon Section 104 of the School Code, which is as follows:

"The County Board of Education shall have authority, upon the recommendation of the County Superintendent of Education, to borrow money on the credit of the school fund of the county to meet salaries of teachers and current expenses when the current funds on hand are not sufficient to meet the same, to be secured by a pledge of the current revenues of the year. All such current loans, except such as are based on county and district local tax proceeds, shall be paid within the school year in which such current loans are made, "and from the funds accruing for the support of the schools within such given school year." The amount so borrowed shall at no time exceed one-third of the sum estimated for current expenses, as shown by the school budget for that year."

I am of the opinion, and so advise, that this section authorizes the county board of education, upon recommendation of the county superintendent of education, which has exhausted public school funds for **current year** to borrow money to pay salaries of teachers and current expenses for current school year, secured by pledges of revenues for the **succeeding year.**

Heustiss v. Hearin, 103 So. 273.

I do not believe the law would allow pledging funds of **several years in advance** for this purpose. The court opinion seems to have limited this to the succeeding year.

Hoping that I have fully answered your two inquiries, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 5, 1927.

Hon. Thomas W. Coleman,
Judge of Probate, Calhoun County,
Anniston, Alabama.

Dear Sir:

I am in receipt of your letter of March 28th relative to the payment of certain licenses which certain parties attempted to pay under protest. Section 366, General Acts of Alabama, 1919, page 442, sets out the procedure for procuring licenses after they have become delinquent. Said section reads, in part, as follows:

> "The License Inspector shall report the same in writing to the Probate Judge who shall forthwith cite such delinquent to appear before him and take out such license, **but such Probate Judge shall not have the authority to determine the liability of such delinquent for such license**, but shall in each case issue a license to the applicant therefor upon the payment by him of the amount or amounts prescribed by this act."

I know of no authority authorizing or compelling the Probate Judge to receive money for licenses of any character under protest. The Judges of Probate of the various counties are furnished forms by the auditor for the issuance of all licenses and are required only to receive money for that character of license for which the party applying makes request. If a party, after he has been cited to appear, fails or refuses to take out the license then he is subject to prosecution and in this way, test the legality of the proposition. The Probate Judge is not required when application is made for license to receive it in any other way than the ordinary way. If payment is offered under protest, then it becomes the Probate Judge's duty to refuse to receive it.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 6, 1927.

Hon. Charles E. McCall,
Chief Examiner of Public Accounts,
Capitol.

Dear Sir:

I have your letter of May 4th, together with a copy of letter from Assistant Examiner Sasser.

It appears from the communications that the County Board of Education of Tuscaloosa County appointed Hon. James B. Sellers to the position of County Superintendent of Education of that County after Hon. T. W. Smith had resigned. It also appears that the County Board fixed Mr. Sellers' salary at $3,000.00 per annum and granted him an allowance of $50.00 per month for traveling expenses, and entered into a contract on these conditions for a period of two years beginning July 1, 1926.

You request an opinion as to whether or not the County Board of Education of that County can legally increase the expense allowance of the County Superintendent. Your attention is invited to Section 281 of the Constitution of Alabama which prohibits the increase or diminution of the salary, fee, or compensation of any officer holding any civil office of profit under this State or any county during the term for which such officer shall have been **"elected or appointed."**

In my opinion a County Superintendent of Education appointed by the County Board holds a civil office of profit under this State. Under the law his term cannot be less than two nor more than five years and his salary or compensation cannot be less than $1,500.00 per annum. He can be removed from office only by impeachment proceedings. (See section 175 of the Constitution; also decision of the Supreme Court of Alabama in Petree v. McMurray). 210 Ala. 639.

I am also of the opinion that a County Superintendent of Education must be a qualified elector of the county in which he is appointed. (Section 2575, Code of Alabama.) There is nothing in the school code expressly providing that he need not be a qualified elector of the county he is to serve. I am also of the opinion that the salary of a county Superintendent of Education can neither be increased or diminished during the term for which he is appointed to office. Your attention is invited to Section 68 of the Constitution of Alabama which prohibits a county from granting any extra allowance to any public officer after contract has been made. In my judgment the $50.00 mentioned as traveling expenses is a flat allowance made by contract and I believe if this were increased after the contract had been made, it would be in violation of Section 68 of the Constitution.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 13, 1927.

Hon. William L. Harrison,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of May 9th. You write as follows:

"Section 11 of the gasoline tax act of February, 1923, and the corresponding section in the act of 1927, provides that if any distributor or dealer fails to make a monthly return required by the act, the Tax Commission shall make an assessment on information and add a penalty of twenty-five per cent.

"This penalty appears to be authorized by the language of this section only when the tax payer fails to make a return and the Commission is compelled to make the return itself.

"We have each month a number of parties who are delinquent in making their returns and who are intentionally delinquent in order to get more time within which to pay the tax. As a practical matter of administration, it is better to wait on these parties and get the payment of the tax on the correct amount than it is to guess at the amount on the exact day it becomes due. Nevertheless, there ought to be some way in which parties who refuse to pay the tax when due could be penalized.

"We would like to know if in your opinion, the language of Section 11 of the Act of February, 1923, and the corresponding section in the new gasoline act could be construed so as to mean that the penalties should be added even though the assessment made by the Tax Commission is on a delinquent return filed by the tax payer."

In reply will say that in both of said statutes, the penalty is provided for only in case the assessment is made by the State Commission upon information and belief, on failure of the tax payer to make return as required by law. It is a universal rule of law that penal statutes and penal provisions in statutes are to be strictly construed and never extended beyond the expressed provisions of the statute.

It is therefore, my opinion that the penalty can be added only in the case mentioned in each of these statutes.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 13, 1927.

Mr. Walter K. McAdory,
Chief Supervisor,
Montgomery, Alabama.

Dear Sir:

This acknowledges receipt of your letter of May 13th, wherein you make the following request:

> "Please give me your opinion as to whether Section 4646 of the Criminal Code of 1923 is in violation of the Constitution of the State of Alabama."

Section 4646 of the Code, 1923, reads as follows:

> "All prosecutions for a violation of any provision of this chapter or of any other law, for the suppression of the evils of intemperance, may be begun by affidavit as well as by indictment and when begun by affidavit, the person charged shall not have the right to demand that a grand jury prefer an indictment for the alleged offense, except where such offense is a felony, but the prosecution may continue no matter in what court or before what judge the trial shall be had upon the affidavit upon which it was originally begun. The said affidavit or any complaint that may be filed in such prosecution may be amended to meet the ends of justice and to prevent a dismissal of the case upon any informality, irregularity or technicality."

The only provision of the Constitution that I find controlling this question is Section 8 of the Constitution of 1901. Section 8 of the Constitution reads as follows:

> "That no person shall, for any indictable offense, be proceeded again criminally, by information except in cases arising in the militia and volunteer forces when in actual service, or when assembled under arms as a military organization or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in the Constitution; provided, that in cases of misdemeanor, the Legislature may by law dispense with a grand jury and authorize such prosecutions and proceedings before justices of the peace or such other inferior courts as may be by law established."

We think it is very clear that the words "provided that in cases of misdemeanor the Legislature may by law dispense with the grand jury" gives full constitutional sanction to Section 4646 of the Code. This provision, in my opinion, is general and applies in all cases of prosecutions of misdemeanors. The rest of this proviso in words as follows:

> "And authorize such prosecutions and proceedings before Justices of the Peace and such other inferior courts as may be by law established."

was for the purpose of conferring upon the Legislature authority to authorize Justices of the Peace or such other inferior courts as may be by law established to try misdemeanors. The Circuit Court has always had jurisdiction to try misdemeanors. But Justices of the Peace prior to the introduction of

this clause into the Constitution were without jurisdiction to try misdemeanors. Their authority in criminal cases was simply for preliminary hearings to determine whether a person should be held over to the circuit court for trial. The Constitution of 1875, in Section 9 thereof, reads as follows:

> "That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the militia and volunteer forces when in actual service, or by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in this Constitution. Provided, that in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the general assembly may, by law, dispense with a grand jury, and authorize such prosecutions and proceedings before justices of the peace, or such other inferior court as may be by law established."

The last clause of that section: "provided that in cases of petit larceny, assault and battery, affray, unlawful assembly, vagrancy, and other misdemeanors, the general assembly may by law dispense with a grand jury and authorize such prosecutions and proceedings before Justices of the Peace or such other inferior courts as may be by law established," was construed by our Supreme Court in the case of Witt v. State, 130 Ala. 139. The latter part of this opinion reads as follows:

> "The present Constitution, differs in this respect from the constitutions prior to that of 1865 (Thomas v. State, 107 Ala. 61), excepts misdemeanors from its prohibition against proceeding criminally by information for indictable offenses, by providing that in cases of misdemeanors 'the general assembly may by law dispense with a grand jury and authorize such prosecution and proceedings before Justices of the Peace or such other inferior courts as may be by law established'—Constitution, Section 9, Article 1, 1875. The first clause of this proviso giving power to dispense with a grand jury is general, and applies to circuit courts as well as other courts."

It will be seen that there is no substantial difference whatever, so far as the constitutionality of Section 4646 of the Code of 1923 is concerned, between the provisions in the Constitution of 1875 and the provision found in Section 8 of the Constitution of 1901.

The only difference in the language used in the said two sections is that in Section 9 of the Constitution of 1875 there is a catalogue of certain misdemeanors followed by the words "and other misdemeanors," while in Section 8 of the Constitution, 1901, there is no catalogue of any misdemeanors, but simply the statement: "provided, that in cases of misdemeanor," etc. It is very clear that what is stated in Section 8 of the Constitution of 1901 is but a shorter statement of the same meaning intended to be conveyed by Section 9 of the Constitution of 1875. In both instances all misdemeanors are intended. The two provisions are in effect identical. The provision of Section 9 of the Constitution of 1875 had been construed in the said case of Witt v. State, prior to the adoption of the Constitution of 1901, and it must

be presumed that the construction given to said Section 9 of the Constitution of 1875 was the meaning intended by Section 8 of the Constitution of 1901. We are, therefore, of the opinion that there can be no doubt of the constitutionality of the Section 4646 of the Code of 1923.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Note: See decision of Court of Appeals and Supreme Court which, however, do not conflict with this opinion.

May 13, 1927.

Hon. G. P. Butler,
Judge of Probate,
Opelika, Alabama.

Dear Sir:

This acknowledges receipt of your letter of April 27th. You write as follows:

> "On April 27, we wrote you in regard to privilege tax on a long-term lease. Will there be due this tax as on deeds, $1.00 per $1,000.00? Term of lease being 19 years and 8 months and the party of second part agrees to pay party of first part yearly rent of $3,900.00 from September 1, 1927, to August 31, 1937, and $4,200.00 from September 1st, 1937, to April 30th, 1947.
>
> "This lease has been filed in my office since April 26, 1927, and I am very anxious to get same on record, will appreciate your prompt attention to this matter."

In reply will say that under the authority of Milliken vs. Faulk, 111 Ala. 658, and that of Riddle vs. Brown, 20 Ala. 412, it is my opinion that such a lease, which must be in writing to be valid is entitled to registration upon the theory that it conveys an unconditional estate in the land leased. It, therefore, conveys an interest in real property and under the filing tax law of 1923 such an instrument must pay a filing tax. The amount of the filing tax, however, would depend upon the cash value at the date of making such lease of the interest conveyed. It would not be right to add together the amounts to be paid each year during the period of the lease. If, in your opinion, the amount that was agreed to be paid each year is the fair and reasonable rental value of such property for such year, then the proper thing to do is to ascertain the present cash value at the date of the making of the lease of each of such payments and then add together the present cash value of all of such years using a discount of eight per cent per annum compounded. Otherwise, you may estimate what, in your opinion, would be a reasonable price paid cash for the estate conveyed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 13, 1927.

Hon. B. Cooper,
County Treasurer,
Hamilton, Alabama.

Dear Sir:

Your letter of April 10th received, in which you ask for an opinion as to the following matter:

> "Does the fine and forfeiture money accruing in a county go into the general fund of the county and in case it is placed in the wrong fund would it be charged back to the treasurer?"

Section 4038 of the Code is intended to direct this matter and reads as follows:

> "All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particular county."

It is clear that the above statute was intended to regulate this fund and it says that the money growing out of all fines and forfeitures shall go to the county in which the indictment is found, or the prosecution commenced, but is silent as to what fund it shall go, whether to the fine and forfeiture or to the general fund.

This question was raised directly in this State and the Court held that all fines and forfeitures must go to the fine and forfeiture fund of the county.

> The State, ex rel., Greene Co. v. Coleman, Treas., 73 Ala. 550.

After the above decision was rendered the following law was enacted:

> "The county treasurer of any county in this State may transfer any balance on hand at the end of the fiscal year of the fine and forfeiture fund in excess of the registered claims and lawful claims or charges against said fund to the general fund or to any special fund to which by resolution of the board of revenue, or court of county commissioners, expressed in writing and spread upon the minutes of the court, he may be directed." (Sec. 304, Code of Alabama, 1923.)

You can readily see from the above that the Treasurer of the county may, at the end of any fiscal year, transfer any balance on hand in the fine and forfeiture fund to the general fund or any special fund after taking into consideration all outstanding claims, such as registered claims and all other lawful claims against said fund. Of course, this would have to be done, after the Board of Revenue or Court of County Commissioners had so directed by proper resolution. This statute as far as I have been able to ascertain has not been construed.

As to your second inquiry, you should have the Commissioners' Court,

by resolution, order that you draw a warrant on the General Fund payable to the fine and forfeiture fund for the amount erroneously placed to the credit of the general fund.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 14, 1927.

Hon. William L. Harrison,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of May 6th. You write as follows:

> "On April 21st you rendered an opinion holding that the license required by Schedule 17 of Allen's compilation of the revenue laws must be paid for posting bills in each incorporated town of less than seven thousand inhabitants.
>
> "We would like for you to supplement this opinion by advising us what license should be collected under this schedule for posting advertising matter outside of incorporated towns and cities, as, for instance, signs or advertisements posted along the state and county highway."

In reply to your inquiry will say that in my opinion the words "in all other places, $10.00" means in all other cities and towns, $10.00. No license is provided for under this schedule for advertising in the country outside the corporate limits of cities and towns."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 14, 1927.

Mr. John R. Leath,
License Inspector,
Gadsden, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry of May 3rd. You write as follows:

> "There is in Etowah County thirty or forty slot machines operating without licenses.
>
> "Will you please advise me what steps to take to collect the license or stop the operation of the machines?"

In reply will say that where a slot machine is being operated, if it has in it an element of chance and constitutes a gambling device, the matter should be reported to the sheriff of the county and to the solicitor of the county or

circuit. It will become their duty to see that the parties operating it are prosecuted. There is no license required for such machine. Where a slot machine is operated with no gambling device but simply for sales purposes, then you proceed to collect the license just as you would in any other case of collecting licenses. There is no difference between collecting this kind of license and that of collecting any other license in the schedule of license under Section 361 of the General Revenue Act of 1919.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 14, 1927.

Mr. John R. Leath,
License Inspector,
Gadsden, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry of May 3, 1927. You write as follows:

> "Please advise what steps to take when one has been cited to take out license and takes out said license before copy of citation can be filed with Probate Judge, and the Probate Judge fails or refuses to collect inspectors fees and penalties."

In reply to your inquiry will say that you should notify the Judge of Probate of the delinquency before serving the citation upon the delinquent. Otherwise, the Judge of Probate has no means of knowing that the party applying for a license is delinquent or that he has been served a citation.

Section 366 of the Revenue Act of 1919 provides among other things the following:

> "For performing the duties required by this section the license inspectors are entitled for each case so brought before the Judge of Probate, to be paid by the delinquent in addition to the license, fifteen per cent of the amount of the license so collected from each delinquent, which must be paid in all cases if report of delinquency has been made to the Judge of Probate of such delinquency."

You will see from the foregoing that it is necessary that you should report the delinquency to the Judge of Probate before the duty of the Judge of Probate arises to collect the fifteen per cent penalty which goes to you. It is my opinion that when you know of a delinquency and report such delinquency to the Judge of Probate and then cite the delinquent to appear before the Judge of Probate and take out a license, it becomes the duty of the Judge of Probate to collect the penalty from such delinquent and turn such penalty over to the license inspector.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 20th, 1927.

Mr. M. V. Henry,
County Treasurer,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of May 17th. You write as follows:

"As Treasurer of Jefferson County, Alabama, I respectfully request your opinion under the authority of Section 869 of the Code of Alabama on the following question:

"The sum of $437.00 was collected by E. C. Hines, Clerk of the Bessemer Division of the Circuit Court of Jefferson County, in the month of November or December, 1926, for solicitor's fees but he did not pay over the same to the County Treasurer until sometime after the first day of January, 1927. Under the Act requiring the Treasurer of this county to pay over to the State Treasurer all moneys remaining in the solicitors fund on the first day of January of each year, the Examiner of the Legislative Committee by direction of the Chief Examiner of Accounts has requested me to pay over said sum of $437.00 to the State Treasurer on the ground that the money belonged to the solicitors fund and should have been paid over during the year 1926.

"I have been advised by my attorneys that under the reading of the Act in question the County Treasurer is required to pay over to the State Treasurer only the balance of the fund which is in hand on the first day of January.

"As this is a question of law connected with the duties of my office, your advice is necessary to the present performance of my duty in the premises. Will you kindly let me know whether in your opinion it is my duty to pay over said money to the State Treasurer or whether it should be retained by me as a part of the solicitors fund for the current year?"

In reply will say that in contemplation of law, the said $437.00 was money remaining in the solicitors fund on the first day of January, 1927, and that the position taken by the Chief Examiner of Accounts is a correct one.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 25, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

Your letter of May 21st has been received. In it you request an official opinion as to whether Section 4491 of the Code relative to extradition of defendants for desertion covers the costs outside of the regular expenses of the officer extraditing the person.

The latter part of this section is intended to cover the matter referred to in your letter and reads as follows:

> "When the judge of said court shall certify, as above provided, all costs incurred by the sheriff, or other officers in bringing such husband, or parent from other states, or from other counties in this State, into the county where the said offense shall have been committed, and all costs incident to such extradition of such husband, parent or parents, shall be paid by the county in which such offense shall have been committed, and the county commissioners, or the board of revenue, shall make such appropriation as may be necessary to carry into effect the provisions and purposes of this section."

I am of the opinion that the sheriff or officer returning the prisoner would be only entitled to receive from the county his actual expenses incurred in the extradition and he could not include in this his fee for arrest and other costs incidental to the trial but would perhaps be entitled to receive this cost as is provided in other criminal cases.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 26, 1927.

Hon. Bibb Graves,
Governor of Alabama,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of May 25th. You write as follows:

> "Section 24½, Acts 1923, page 380, has been codified as Sections 1344-1346, Code 1923. Under the authority of these sections the State Board of Administration on December 6, 1926, made an **exclusive** ten-year contract with a Highway Advertising Company for the purpose of placing advertisements along the highways of Alabama for a consideration moving to the State.
>
> "Will you please advise whether in your opinion a contract of this character can be executed by one Administration that will be binding upon the succeeding administration;
>
> "And whether or not in your opinion under the authority of these Sections the State Board of Administration has the power to grant to an Advertising Company the **exclusive** right of placing advertising signs along the public highways;
>
> "And whether or not in your opinion the present State Board of Administration has the authority to negotiate contracts with other Advertising Companies for placing advertising signs along the highways of Alabama subject, of course, to the rules and regulations made by the State Highway Commission covering the placing of these signs at the approval of the Governor?

"Your answer to these questions will be very greatly appreciated."

In reply will say that it is my opinion that the section of said act referred to was not intended to give the Board of Administration power to sell a monopoly of the right to post signs along the right of way of public highways in this State. The part of said section pertinent to your inquiry reads as follows:

> "The State Board of Administration is hereby vested with the authority to let contracts for the placing of markers and posting of signs and advertising matter on said highways and shall fix the compensation to be paid to the State by all persons contracting with said Board for advertising space on said highways to be paid in annual, quarterly, or monthly installments as may be prescribed by said Board, provided that if any contract is made with any person for the purpose of sub-letting the space for such contractor the compensation to be paid the State by such contract shall not be less than 20% of the gross income received by him."

From the reading of the foregoing it clearly appears that the power of the Board of Administration to let contracts was to be a continuing power vested in the Board at all times and that it was not intended that the Board of Administration should have the authority to grant a monopoly to any particular person or corporation and thereby deprive itself and its successors in office of all power granted by said section. It is, therefore, my opinion that the present Board of Administration has the authority granted by Section 1345 of the Code to make contracts for letting to any individual or corporation the privileges provided for therein. It is my opinion that those acting in the prior administration were entirely without authority to contract away the powers granted by said section. It is a continuing power and the State Board of Administration cannot by contract nullify this power.

Respectfully,
CHARLIE C. McCALL,
Attorney General.

May 27, 1927.

Hon. H. C. Fulton, Member,
County Board of Education,
Oxford, Alabama.

Dear Sir:

I have your letter of May 24th together with affidavit. My understanding is that on April 29, 1927, the County Superintendent of Education presented to the County Board of Education the names of eleven persons for consideration by the Board in its election of the principal of the county high school of Calhoun County, and that thereupon the County Superintendent of Education asked to be relieved from taking any part in the election of the principal of said school, and stated that whatever the Board did would receive his approval. The Board then proceeded to a consideration of the names of the persons placed before it by the Superintendent of Education, and, at this

meeting, elected Hon. J. F. Mitchell as principal of said County High School. Mr. Mitchell was one of the eleven persons whose names were placed before the County Board of Education by the Superintendent. After Mr. Mitchell had been elected principal of said High School, the Superintendent sent forward proper notification to the State Board of Education after having approved Mr. Mitchell for appointment on the form prescribed for such notification.

You request an opinion as to whether or not Mr. Mitchell was legally elected by the Board.

In the case of Board of Education v. Watts, 95 So. 498, the Court of Appeals of Alabama in construing Section 12, Article 5 of the School Law (para. 92, School Code, see also para. 130 School Code) said:

> "Under this statute (Section 12) the County Board has no power to act until a principal has been recommended in writing by the Superintendent of Education. The power of selection is joint, and until the Superintendent has nominated a principal as required by Article 6, Section 14 of the School Code, (Acts 1919, page 590), there is no occasion for action on the part of the County Board of Education and a mere failure to act cannot be construed into a waiver of anything or to an implied contract."

See also Opinions Attorney General 1923-24, page 380.

In the same case the Court held that:

> "The formal manner of presenting the nomination **in writing** might be waived by the Board, but not the nomination."

I am of the opinion that the above cited decision was based upon a different situation from that which exists in the present case.

My judgment is that in the Watts case the Superintendent of Education had not nominated anyone. In the present case the facts disclose that Mr. Gibson had, in effect, nominated eleven persons for consideration by the Board. I think that it is immaterial that he nominated all of them at once, so long as he nominated some one.

I am, therefore, of the opinion that when the names of eleven persons were placed before the County Board of Education by the Superintendent for consideration by the Board, in its selection of a High School Principal from amongst that number the Board was legally justified in considering this act of the Superintendent as a nomination of each individual party whose name he placed before the Board, and the Board had a legal right to proceed to the election of one of those eleven persons. This having been done, in the case of Mr. Mitchell, I am of the opinion that Mr. Mitchell's election as principal of the County High School of Calhoun County was legal and it became the duty of the Superintendent of Education to fill out the form prescribed and forward proper notification to the State Board of Education for its action in the premises, under paragraph 410 of the School Code of 1924.

I might say right here that the contract with a High School Principal must be entered into between him and the County Board of Education

through its executive officer, the County Superintendent of Education, and that it must thereafter be approved by the State Board of Education through its executive officer, but that the approval or disapproval of the contract by the State Board of Education, under the law, can relate only to the qualifications of the person who has been elected by the County Board of Education. In other words, the State Board of Education has nothing to do with the salary or length of term of a Principal of a County High School. These matters are within the exclusive control of the County Board of Education as provided by law.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to
State Superintendent of Education,
Capitol.
Chief Examiner of Accounts,
Capitol.

May 31, 1927.

Hon. Edward L. Colebeck,
Supt. of Education, Hale County,
Greensboro, Alabama.

Dear Mr. Colebeck:

I have your letter of May 10th, answer to which has been delayed on account of absence from the city.

You request an opinion as to whether or not the salary of (a) a principal of an elementary school or (b) a teacher in a public school can be increased or decreased during the term for which such person is appointed. You state that you request this opinion because of the fact that sometime ago I rendered an opinion to the effect that the salary of a county superintendent of education could neither be increased or diminished during the term for which he is appointed. You set forth in your letter the facts upon which you base your request.

I am of the opinion that a principal of an elementary school whose services are engaged as provided by law for the employment of principals is not an officer and that if provision is made in the contract of employment to that effect the salary may be increased or diminished at any time during the term of the contract. I am also of the opinion that the same situation exists with regard to a teacher in a public school.

I might state here that wherever a principal or teacher is employed in the public schools, that employment cannot become effective unless the county board of education first authorizes it, after you have nominated the principal or teacher for employment, as provided by law. The fact that you have nominated the party and the county board has approved the nomination, and the amount of salary, and the length of time the employment is to continue should appear in the minutes of the County Board. This is the Superintendent's authority to enter into a contract with the teacher at the rate and

for the time specified in the minute book. Wherever a change of rate occurs, before the change can become legally effective, the fact that the change is authorized and the terms thereof must appear in the minute book, whereupon it becomes the duty of the county superintendent to enter into a new written contract with the party for the new rate, for the time and beginning on the date specified in the minute book.

The form of contract drawn up by the State Board of Education does not make provision for showing how much of the salary is to be paid from the various funds. Therefore, you will have to keep some record of it and you may, if necessary in order to do this, set forth this agreement in type as an addition or part of the regular form of written contract prescribed by the State.

Of course, if your minutes do not state the correct situation with regard to the agreement, it is proper for the Board at its next meeting to amend the minutes accordingly, and thereupon you may change your written forms of contract with the party so as to agree with the corrected minutes.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 31, 1927.

Hon. Thos. Minor,
Treasurer, Shelby County,
Columbiana, Alabama.

Dear Sir:

In answer to your letter of May 21, wherein you request an opinion as to the legality of the use of county funds in payment of warrants drawn by the Board of Revenue in favor of the County Superintendent of Education for postage, stationery, etc., I invite your attention to paragraph 137 of the School Code, 1924, which makes it mandatory that upon the proper presentation of a claim, the Board of Revenue pay for such items.

Under the above cited paragraph of the School Code, it is the duty of the Board of Revenue to furnish the County Superintendent of Education with stamps, stationery and office equipment.

Public school funds cannot be used for this purpose.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

May 31, 1927.

Hon. J. Percy Oliver,
Judge of Probate,
Dadeville, Alabama.

Dear Judge:

With reference to your letter of May 21st, concerning slot machines, will state that some days ago I rendered an opinion that a machine which is operated purely as a vending machine is not in violation of the law, so long as it involves no game of chance.

I have observed, since rendering that opinion, that the innocent looking machine concerning which the opinion was rendered is uniformly operated as an unlawful gambling device, and in almost every case it is operated in violation of Section 4247 of the Criminal Code, which prohibits lotteries.

You will observe my reference to the Code that Section 4247 prohibits lotteries and gift enterprises, but does not specifically mention slot machines. You will observe that Section 4248 specifically mentions slot machines and provides a smaller penalty for setting up, carrying on or operating a slot machine.

Some years ago the question arose as to whether or not an indictment would lie for the operation of a slot machine under Section 4247 inasmuch as Section 4248 specifically mentioned such machines. The following cases holding that a slot machine may be so operated as to come within the provisions of Section 4247, relating to lotteries for which there is a heavy penalty are cited:

Johnson v. State, 137 Ala. 101.
Loiseau v. State, 114 Ala. 34.
Reives v. State, 105 Ala. 120.

Your attention is also invited to a full discussion of this matter appearing in.25 Cyc. p. 1638.

In the cases cited above, the Supreme Court of Alabama held that there was no conflict between Section 4247 and Section 4248. In Loiseau v. State, supra, the Court said:

> "There may be gaming which is not by lot but in every prohibited lottery there is an element of gambling. * * * We would not be understood as deciding that a slot machine is necessarily one of lot within the prohibition of the law; nor do we hold that a wheel of fortune carries with it the legal import of a lottery. Whether it is so or not depends upon the use to which it is put in the particular case. Whatever may be the name or character of the machine or scheme, if in its use a consideration is paid, and there is gambling, the hazarding of small amounts to win larger, the result of winning or losing to be determined by chance in which neither the will nor skill of man can operate to influence the result, it is a determination by 'lot' within the comprehensive word 'lottery' used in the Constitution of this State."

I have found from investigation that there is a certain type of slot machine in operation in this State, which, when a nickel is put into the

slot and a lever is pulled three cylinders revolve, and upon turning a knob the machine will dispense a nickel's worth of mints, and at the same time **may** release some metal slugs, marked "no cash value." Officers are told that these slugs are for amusement only, and cannot be redeemed either in cash or merchandise. The truth is that the slugs are worth five cents apiece and are redeemed in cash or merchandise, under a sub rosa agreement.

This machine, when so used, is a lottery and any person who sets it up, carries it on, or is concerned in setting it up or carrying it on, violates Section 4247 of the Criminal Code.

You will, of course, understand that, in order to prove that this machine is a lottery it must be played and the checks must be redeemed, in which event the owner of the machine, the proprietor of the place and those who operate it, violate the law.

Trusting this answers your inquiry fully, I am

Cordially yours,
CHARLIE C. McCALL,
Attorney General.

June 6, 1927.

Hon. J. W. Lane,
Sheriff, Chambers County,
Lafayette, Alabama.

Dear Sir:

I acknowledge receipt of your letter of May 27th, which reads as follows:

> "I have asked the Commissioners Court of Chambers County to increase the salary of Mr. A. Z. Kitchens, who is one of my deputies, to $100.00 per month. Mr. Kitchens is now receiving $75.00 per month. All of the members of the Commissioners Court have stated to me that they are willing to make this increase, but that they are of the opinion that they cannot do so because the law provides that the salary of an officer cannot be increased during his term of office. I am of the opinion that a deputy sheriff does not come within the above provision and I will appreciate it if you will advise me whether or not the Commissioners Court has the right to increase his salary during his term of office."

In reply, I advise you that Section 281 of the Constitution does not apply to deputy sheriffs. The status of a deputy sheriff is contractual. He is not an officer within the meaning of Section 281 of our Constitution for the reason that he has no definite term of office. This being true, the salary of a deputy sheriff can be decreased or increased by the contracting parties, at any time, without offending against the above mentioned section. However, it should be remembered that Section 10188, Code 1923, fixes a maximum and minimum compensation for the chief deputy, in certain counties. You do not state that Mr. Kitchens is your chief deputy. If he is not your chief deputy he cannot legally be paid a salary by the court of county commissioners of Chambers County, in the absence of an act authorizing that this be done. I find no such local act.

Under the authority of Section 10188, you may have as many deputies as you desire, but you are to pay them—not the county. Only the chief deputy is to be paid by the county. The statute provides that the chief deputy shall receive a salary of not less than nine hundred and not more than fifteen hundred dollars per annum. The court of county commissioners may legally raise or lower the salary of the chief deputy sheriff, at any time, provided that he is not paid less than $900.00 nor more than $1,500.00. You may employ and compensate, as many other deputies as you may desire, not to be paid from public funds, or lower their salary during their employment, without violating Section 281 of the Constitution.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 6, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

I am in receipt of your letter of May 20th in which you ask for an opinion of this office on the following matter:

> "Please advise me whether or not we may legally appropriate the sum of two hundred dollars in conjunction with the same amount appropriated by the town of Tallassee and the Alabama Power Company at Tallassee for the purpose of constructing a small jail at Tallassee for the confinement of county prisoners and prisoners of the City of Tallassee."

I am unable to find any law giving Commissioners Courts or Boards of Revenue of the various counties authority to erect jails or courthouses except at points where the Circuit Court is held. If Circuit Court is held in more than one place in the county, Commissioners Courts or Boards of Revenue have authority to erect a courthouse and jail sufficient to accommodate those engaged in carrying on the business of the county. This authority is given under Section 212 of the Code of Alabama which reads as follows:

> "The courts of county commissioners and boards of revenue of the respective counties shall erect courthouses, jails and hospitals, and other necessary county buildings; and such courts and boards have authority to levy a special tax for that purpose. In counties in which a circuit court or court of like jurisdiction has been or is hereafter authorized to be held in more than one place, the court of county commissioners or board of revenue may build courthouses in each place of holding court, and in all counties wherein a circuit court or court of like jurisdiction is authorized to be held or may hereafter be authorized to be held in more than one place for six months or more during any year the Court of County Commissioners or Board of Revenue of such counties shall erect a courthouse and jail at each of such places where such court is held,

such courthouses and jails to be adequate and commodious for the business of such court and county at such place, but this section shall not affect in any wise any local law heretofore enacted that is not in conflict herewith."

Before the Court of County Commissioners or Board of Revenue can appropriate any money for any purpose it must be able to point to some statute authorizing it. I am, therefore, of the opinion that your Commissioners Court is without authority to make the appropriation referred to in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 6, 1927.

Hon. Frank Gordon,
Deputy Solicitor, Perry County,
Marion, Alabama.

Dear Sir:

Your letter of March 26th, making the following inquiry received.

"Please advise me if a man who has worked the road in a county whose inhabitants are subject to road duty, for a period of six or seven months and who has paid his road tax in a former place of residence, a different county, is liable or subject to road duty in the county where he is working, even though he claims the other county as his residence."

I am of the opinion that when a man has worked his full time required on the public highways of the county he claims as his residence or has paid the amount in lieu of performing manual labor upon the road for the current year he would be exempt from further road service or the payment of any road tax. If it were otherwise and a man was transient, staying only a month or two in each county, he would be subject to either work the road or pay a road tax in every county and I do not believe that this is the contemplation of the statute. Working the road for the time prescribed or the payment of the tax in the county of the actual residence of any citizen of Alabama, in my opinion, should and would exempt him from being harassed under this law in every county where his duty, vocation or calling might carry him. There seems to be no ruling of the Attorney General or any construction by our courts of Section 1353 and Section 5456 of the Code as pertaining to this particular point.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 6, 1927.

Hon. Pat Byrne,
Sheriff, Mobile County,
Mobile, Alabama.

Dear Sir:

I am in receipt of your letter of May 31st in which you ask for an opinion on the following matter:

> "* * * a party is convicted on a Federal charge, say on May 30th, and given a sentence of ninety days; then on the following day he is sentenced by the State for the same length of time.
>
> "If the State fails to advise when his sentences would commence, does the State sentence run concurrently with the Federal sentence?"

I am of the opinion that where a man is sentenced in the Federal Court for an offense and at or near the same date he is sentenced in the State Court for the same offense under the State law, the fact that he has been sentenced in the Federal court should be called to the attention of the presiding judge, and the State sentence should be arranged so as to commence at the expiration of the Federal sentence. In placing the party in jail or in the Federal prison there should be accompanying the papers of transmission a hold over notice so that at the expiration of his Federal sentence he may be conveyed to the State prison to serve his State sentence. I am of the opinion that should the fact of his Federal sentence not be called to the attention of the presiding judge at the time he passes sentence, the judge can, at any time, within thirty days, set aside the sentence and sentence the defendant so that his State sentence may begin at the expiration of his Federal sentence, as he has control of all sentences and judgments for thirty days after their rendition.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 8, 1927.

Board of Review,
Cullman County,
Cullman, Alabama.

Dear Sirs:

Attention of Mr. B. M. Nash, Chairman:

Your letter of June 6th addressed to Hon. J. M. Kilpatrick, has been referred by him to this office for reply. You write as follows:

> "A tax payer voluntarily assesses his property at the preceding year's valuation, and does not file written protest, and appears before the Board of Review at its June session and asks for relief. The question at issue

being a matter of jurisdiction and authority, or right on the part of the board to open such cases and afford a hearing for the taxpayer?

"Also a case where land was sold in January of current year, and property assessed by tax assessor, can tax payer get relief at the hands of the board at its June session?"

In reply to your first inquiry will say that it is answered by Section 56 and Section 57 of the Revenue Act, 1923. All objections to assessments must be made in writing and filed with the Secretary of the Board of Review on or before the last Monday in May. This objection must be made after the assessments have been tentatively fixed by the Board of Review at its meeting in April, and after publication has been made as required by Section 56. If no objection has been made until the meeting in June, the tax payer cannot then have the matter reviewed as to the valuation of any property returned by him for assessment.

In answer to your second inquiry will say that property must be assessed to the person who owned it on October 1st, of the assessment year. It is immaterial that he sell this property after that date to another person. The assessment must still be against him. If the party to whom he sells the property contracts and agrees to pay the taxes for such assessment year, that is entirely a contract between seller and purchaser with which the State has nothing to do, and in which it is not interested.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1927.

State Tax Commission,
Capitol.

Dear Sirs:

This acknowledges receipt of your inquiry of May 23rd. You write as follows:

"Please advise us if section 13 of the gasoline tax act approved February 10, 1923, repeals that part of schedule 74, license act of 1919 referring to gasoline.

"This matter has been discussed with Judge Evans and this Commission has proceeded in accordance with the conclusion reached. We like however to have a written opinion in order that we may submit the same to tax payers when the subject matter is up for discussion."

In reply will say that it is my opinion that it was not the legislative intent, in section 13 of Act No. 62, (Acts 1923, page 39) to repeal schedule 74 of Section 361 of the Revenue Act, 1919. In the caption of said Act No. 62, nothing is said about repealing any statute, and, in my opinion, nothing could be implied from any part of the caption of said act that the bill was intended to repeal any law other than such as might be construed as repealed by

implication; that is, a law of the same kind covering the same subject matter —a sales tax of so much on the gallon, similar to the tax levied by said Act No. 62.

In my opinion said section 13 was intended to apply to Act No. 74 (Acts 1920, page 117 et seq). Said Act No. 74 is an excise and inspection tax at so much per gallon on the sale of gasoline, just as the said Act No. 62 is an excise tax on the sale of gasoline at so much per gallon.

Said Act No. 62 in Section 2 thereof, levies a tax of two cents per gallon upon the sale of gasoline in this state. That is the only tax levied by the Act. Act No. 74 levies a tax of one-twentieth of one cent on the sale of each gallon of gasoline sold in this state. In my opinion, it would be perfectly competent and consistent with statutory construction to hold that said Act No. 62 repeals said Act No. 74 by implication had there been no provision for repeal in said Act No. 62. It is the same kind of tax covering exactly the same subject matter. The Legislature, out of abundance of caution, specifically provided, in said Section 13, for the repeal of like taxes, covering the same subject matter, which, in my judgment, it had a right to do under the implications of the caption of said Act No. 62.

In other words, it is my opinion, that the caption of Act No. 62 would cover the provisions of said Section 13 when said Section 13 is construed as indicated; but would not be broad enough to cover the repeal of said schedule 74. To construe said Section 13 as intending to repeal said schedule 74, would, in my opinion, render said Section 13 unconstitutional. Said schedule 74 is not, in my opinion, an excise and inspection tax at all; it is not, in my opinion, an excise tax on the sale of gasoline in the same sense that said Act No. 62 is an excise tax on the sale of gasoline. It is, in my opinion, an excise tax on the business of selling illuminating, lubricating or fuel oils or gasoline at wholesale, that is to say, in quantities of twenty-five gallons or more.

It is, therefore, my opinion, that neither said Act No. 62, by implication, nor Section 13 thereof, directly or indirectly, in any way affects said Schedule 74. It is my opinion that said Schedule 74 is a valid subsisting statute.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 13, 1927.

Hon. S. M. Tharp,
County Superintendent of Education,
Bay Minette, Alabama.

Dear Sir:

I have your letter of June 8th, in which you request an opinion as to whether or not your County Board of Education may legally issue warrants on the special three-mill district tax of a school district for the purpose of securing funds to purchase a building and a lot for school purposes.

Your attention is invited to Paragraph 241, et seq., of the School Code of 1924 which authorizes the County Board of Education to issue and sell school warrants for the purpose of erecting, repairing, enlarging or equipping

school buildings **or making other improvements in the school facilities of the county,** or for the purpose of raising money for such activities. The warrants may be issued against the county three-mill tax or the special three-mill district tax which has been voted under authority of the special school tax amendment. The rate of interest must not exceed six per cent per annum. The amount of warrants issued including interest must not exceed the income from the tax levy. The method of estimating such income is described in Paragraph 241 of the School Code. The provisions of Paragraphs 241, 242, and 243 of the School Code of 1924 should be carefully followed. The minute book of the County Board of Education should give a fully detailed account of the transactions from beginning to end.

Trusting that this fully answers your inquiry, I am

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 13, 1927.

Hon. P. A. McDaniel, Jr., Superintendent of Education,
Barbour County,
Clayton, Alabama.

Dear Sir:

I have your letter of June 2nd together with enclosure showing that sometime ago the members of a local building committee at Baker Hill School in your county, while superintending the erection of a certain school incurred certain expenses with the Eufaula Hardware Company for materials for the erection of the school. After this was done, the county board of education issued two warrants on the public school funds in payment of the obligation of the building committee. You do not state whether or not these warrants were issued against the district tax, but I will assume that they were so issued. You request an opinion as to whether or not this transaction of the Board of Education is valid and legal. You call attention to an opinion rendered by me to the county superintendent of education of Marengo County, Alabama, dated February 21, 1927, and ask whether your situation is any different from the one passed on for Marengo County.

If I understand your situation correctly the county board of education did not create the debt with the Eufaula Hardware Company, but this was done by the local building committee members, they apparently assuming that they had authority to obligate the county board of education and the public school funds of your county for the payment of such debts as they saw fit to create in building the school at Baker Hill.

There is nothing in the law which authorizes the county board of education to turn over to a local building committee its authority to incur obligations against the public school funds in the erection, repair and equipment of school houses. The whole machinery of the public school system is based upon the idea that the county board of education is to run the local system through its executive officer, the county superintendent of education. Even

the county superintendent of education cannot incur an obligation without the consent of the county board. (Para. 140 School Code.)

If these purchases were approved by the county board of education, and the building committee acted simply as purchasing agent, I think that the situation is slightly different from that described in my opinion to the superintendent of education of Marengo County, for without doubt the county board of education has authority with the approval of the county superintendent to appoint a purchasing agent in such instances.

However, if these transactions took place without the knowledge and consent of the county board of education, and were only brought to light sometime after it occurred, I am of the opinion that such a transaction would not come within the contemplation of Paragraph 241 of the School Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 14, 1927.

Hon. J. W. Ford, Sheriff,
Marion County,
Hamilton, Alabama.

Dear Sir:

I acknowledge receipt of your favor of June 10th.

You desire to know whose duty it is to furnish or purchase a stove; said stove to be used in the preparation of meals for prisoners confined in the county jail.

It is my opinion, and I so advise you, that it is the duty of the Court of County Commissioners or Board of Revenue to purchase a cook stove for the above named purpose. This authority is conferred by Section 4878, Code of 1923. The Attorney General, on April 23, 1927, rendered an opinion to Hon. W. H. Merrill, President, Board of Revenue, Columbiana, Alabama, in harmony with the instant opinion.

In this connection, you may desire information as to the authority to purchase fuel for said stove. On April 5, 1921, this office ruled that the purchase, by the county, of fuel to be used in cooking and preparing food for prisoners, was legal.

Attorney General Report, 1920-22, page 144.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 17, 1927.

Hon. J. T. Ellison,
County Solicitor of Bibb County,
Centerville, Alabama.

Dear Sir:

I acknowledge receipt of your favor of June 14th.

You desire to know whether or not an act approved September 29, 1919, which appears at page 824 of the 1919 General Acts of Alabama, is constitutional. Said Act reads as follows:

"Section 1. That in all counties having a population of not less that 22,750 and not exceeding 23,000 according to the last preceding Federal census, or any subsequent census, the informer shall be entitled to one-half of the fine in all convictions for violations of any provisions of the prohibition laws.

"Section 2. That such informers fees as provided for in Section 1 hereof shall be paid out of the County Treasury after the fine has been collected and paid into the County Treasury, upon the certificate of the Circuit Solicitor, Deputy Solicitor, or Foreman of the Grand Jury of such Counties.

"Section 3. That all laws and parts of laws in conflict with the provisions of this Act be and they are hereby repealed."

When this act was approved, Bibb County was the only county in the State to which it could apply. This local legislation was enacted, garbed in the cloak of a general law. Clearly, this act is unconstitutional, and is an excellent example of "Classification run mad."

My authority for holding this act unconstitutional may be found in Reynolds, County Treasurer, et al. vs. Collier, 85 So. 465.

Cordially yours,
CHARLIE C. McCALL,
Attorney General.

June 17, 1927.

Hon. J. C. Nation,
Judge of Probate,
Oneonta, Alabama.

Dear Sir:

This acknowledges receipt of your letter of June 11th. Your write as follows:

"We have several men in this county who are selling and placing monuments, they represent marble concerns in Georgia, said firms tell them they do not have to pay the State and County a license to carry on such business, they are worrying this office considerably. I shall thank you for an opinion on this subject. I am familiar with Schedule 70, page 191 of the Revenue Code of 1923. The Attorney General of Georgia tells them that the license cannot be legally collected. I shall thank you to advise me in this connection."

In reply will say that if the person or persons referred to by you sell monuments which are in Georgia, to be shipped in interstate commerce, such a person is not engaged in the business of selling monuments within the meaning of schedule 69 of section 361 of the General Revenue Act of 1919. The State cannot levy a license upon interstate commerce. If, however, these monuments are shipped into Alabama, the person or persons engaged in erecting these monuments after they arrive here are, in my opinion, subject to a license. It is my opinion that a monument is not such an article of commerce that requires such special skill in erecting it as to make the erection of a monument an integral part of the sale in interstate commerce. Most any stone or brick mason can erect a monument.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 20, 1927.

Hon. Henry J. Miller,
Clerk. Circuit and County Courts,
Guntersville, Alabama.

Dear Sir:

I am in receipt of your letter of June 9, 1927, in which you make request for an opinion and state your proposition as follows:

> "I respectfully ask that you give me the proper construction of, and if possible, a reconciliation of sections 3755 and 3667, also whether or not section 3755 relates to the clerk of the county court and the sheriff as well as to the justice of the peace and constable in cases arising or instituted before the judge of the county court. Can any costs be taxed to parties sentenced to hard labor under section 3667 in county court when the evidence is not reduced to writing?
>
> "Can the above mentioned sections of the Code of 1923 be reconciled with No. 72 Senate Bill 100 by Mr. Teasley, approved Feb. 18, 1927, and make it possible to charge more than five dollars costs in county court?
>
> "I have caused some parties to be sentenced for a term longer than the law apparently justifies under the three laws above mentioned, because I taxed against them the costs provided in Section 3758 the first part thereof—not the latter which appears to be very different as relates to county court judge's fees, and I am, therefore, anxious to get a construction of these four sections of the Code I have mentioned above, so that I may be able to correct the errors I have made in several cases."

There is no conflict in Sections 3755 and 3667 of the Code of Alabama. Section 3755 provides that the fees and costs of the committing magistrate and constable, both together, shall not exceed $10.00. Section 3667 provides that when the defendant has been tried preliminarily and bound over and later is convicted in the Circuit Court or Court of like jurisdiction that the State shall not be charged with the costs of the preliminary hearing with more than $5.00. This relates purely as to the mode of payment and defines what

part of this $10.00 the State will be required to pay. Then in this event there would be $5.00 of the costs of the preliminary trial left unsettled. This would be a charge against the defendant individually and the judgment should be returned against him for this balance and execution should issue for the same. Section 5136 of the Code of Alabama, 1923, defines who are magistrates. Section 5218, Code of Alabama, gives any magistrate as defined by Section 5136 jurisdiction of all preliminary proceedings. I am of the opinion that when judges of probate exercise this jurisdiction they do so as probate judges and not as judges of the county court, as the probate judge is only ex-officio judge of the county court by virtue of his holding the position as probate judge. (See Section 3801, Code of Alabama, 1923.) I am of the opinion that Section 3755 of the Code of Alabama applies to sheriffs and judges of probate while performing their duties in connection with preliminary hearings. The fact that it says constable would not effect it in the least when the sheriff is performing these duties, as he as sheriff has all the powers and is entitled to all the remunerations of constables. But this section does not apply to the clerk of the county court, as he is not the clerk of the probate judge when sitting as a committing magistrate. The probate judge when sitting as a committing magistrate must issue his own subpoena for witnesses, write all of his judgments and orders. The clerk acts only when the cases are before the judge of probate as ex-officio judge of the county courts on warrant.

The Act you refer to, namely, Senate Bill No. 72, approved February 18, 1927, does not change the rule as to the amount of costs and as to how it shall be collected. It simply says that the costs shall be paid as provided in Section 3667 of the Code of Alabama.

There is no doubt that under Section 3755 of the Code of Alabama if the magistrate fails to take down the evidence in writing he would not be entitled to compensation for said service.

Hoping this answers your inquiry, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 20, 1927.

Hon. Harry K. Martin,
Judge of Probate,
Dothan, Alabama.

Dear Sir:

This acknowledges receipt of your letter of June 15th. In reply will say that in recording a quit claim deed it is necessary for the party offering such a deed for record to show to you what property or interest in property is conveyed thereby. Since a quit claim deed does not purport to convey any definite interest in property, such information is absolutely necessary. When this information is given and you ascertain the value of interest conveyed, you then put fifty cents on each $500.00 or fractional part thereof of the value of such interest. In all cases, it must be presumed that some interest is

conveyed, or else the instrument would not be entitled to record. Hence there must always be the minimum sum of fifty cents filing tax fee, and if the value of the interest conveyed is more than $500.00 the filing fee should be accordingly.

There is, in my opinion, a distinction between a quit claim deed and a warranty deed, whether common law or statutory, so far as the filing tax is concerned. It is my opinion that when a warranty deed is offered for record the person offering it for record cannot be heard to contradict what the deed declares and the value of the whole property or interest in property which such a deed purports to convey must be considered, but since a quit claim deed does not state what interest is conveyed, it becomes necessary for the party offering it for record to give the Probate Judge the necessary information upon which he may collect the tax.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 22, 1927.

Hon. H. R. Dudley,
Judge of Probate,
Seale, Alabama.

Dear Judge:

This acknowledges receipt of your letter of June 15th. You write as follows:

> "Please advise me whether or not a person or firm is liable for peddler's license who delivers ice to regular customers daily."

In reply will say that it is the ruling of this office that where a manufacturer of ice sells the ice manufactured in the usual method of selling ice by delivering it at the different dwellings and places of business, he is not to be considered a peddler; but, where a person buys ice from a manufacturer or other person, and takes it around and sells it at retail at the various residences and places of business, such a person will be regarded as a peddler.

We realize that the above is a close distinction, but ice is a necessary commodity of such a character as to require such a method of distribution and sale by the manufacturer. His product will not keep as other products will, to be sold in the ordinary course of trade, and, it is my opinion, that it was not the Legislative intent to include a manufacturer of ice in this license schedule.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 22, 1927.

Hon. E. L. Hays,
County Superintendent of Education,
Hartselle, Alabama.

Dear Sir:

I have your letter of May 16th. You state that the local school board of Falkville Senior High School was authorized by the County Board of Education to collect a matriculation fee of $10.00 per year from all pupils above the seventh grade, and that this fee was to be held by the treasurer of the local school funds subject to the order of the County Board of Education, to be used to supplement the county appropriation for the maintenance of said high school. You state that this agreement was made in the form of a regular resolution by the county board of education and is spread upon its minutes. You state that the local school treasurer at Falkville has about one thousand dollars on hand and that this is needed for the payment of the salaries of teachers.

You request an opinion as to whether or not you can legally use this money for the purpose.

I invite your attention to those provisions of the school code relative to the authority to collect incidental fees; namely, paragraphs 99 and 146 of the School Code 1924. In the first place, your agreement that this money should be held subject to the order of the county board of education is an illegal agreement for the reason that the only provisions made by law for the use by the county board of any part of the incidental fees collected in the public schools is that provision contained in Paragraph 108 of the School Code of 1924. In all other respects the use to which the incidental fee may be put is in the hands of the local school trustees, appointed by the county board, and under the law the principal of the school must keep minutes showing a record of the receipts and expenditures of the incidental fees collected in said school.

The expression—"incidental"—means just what it says. The word is defined by Webster as "collateral," and that word is defined by Webster as follows:

> "Related to, but not strictly a part of, the main thing or matter under consideration."

Some discussion of incidental fees is contained in the following cases:

Bryant v. Whisenant, 167 Ala. 325.
Roberson v. Oliver, 189 Ala. 82, 66 So. 645.
Williams v. Smith, 192 Ala. 428, 68 So. 323.
Ryan v. Sawyer, 196 Ala. 69, 70 So. 652.

In my opinion, it was never the intent of the lawmakers to allow local school authorities to collect incidental fees and use such fees in the payment of teachers' salaries. As shown above, by the definition taken from Webster's Dictionary, an incidental fee is a collateral fee; that is, it is a fee which is to be devoted in its use to something besides the main operation for which public school funds are to be used generally. Our whole school system is based upon the idea that the public schools of the State shall be run with

funds obtained through taxation and not by incidental fees. My opinion is that incidental fees collected in a public school can be used only for the maintenance of the school, building and grounds, that is, providing heat, light, water and keeping it in proper repair. When the fee is devoted to any other use, it is devoted to the main thing; that is to say, that part of the system which is supposed to be run exclusively by the public funds obtained through state, county and district taxation methods.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 23, 1927.

Hon. R. E. Tidwell,
State Superintendent of Education,
Montgomery, Alabama.

Dear Sir:

I have your letter of June 21st, in which you request an opinion of me as to whether or not funds arising from adjustments of insurance losses on State aid buildings may be used to match State aid in replacements or for new buildings of any character. You state that under the uniform and established practice of the Department of Education that Department has consistently refused to permit the use of such funds in matching further state aid.

I am of the opinion that where a school building has been erected with local and State funds and the title to the property is in the State of Alabama and the building is insured in the manner provided by law and that building is later destroyed and the insurance money is paid over to the County Board of Education, such insurance money cannot be used in matching further State aid in the erection, repair or equipment of another building to replace the old one. As stated by you the funds recovered from the insurance adjustments represent the value of the property destroyed and the monies having already been once matched by the State cannot be used again as a basis for securing State aid.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

CCMc:RF
June 23, 1927.

Hon. W. B. Sasser,
Assistant Examiner of Accounts,
Department of Examiners of Accounts,
Capitol.

Dear Sir:

I have your letter of June 23rd in which you request an opinion as to whether or not it is mandatory that the County Superintendent of Education publish in a newspaper in his county an annual statement of the receipts and disbursements of county school funds.

Your attention is invited to paragraph 139 of the School Code of 1924 which provides that the County Superintendent shall publish the statement mentioned by you. In my opinion the statement which he must publish should be compiled along the lines provided in paragraph 138 of the School Code. You will observe that this statement must be published in a newspaper at the county seat.

I am of the opinion that the law is mandatory that the superintendent publish this statement.

The superintendent will of course not confuse the statement required by paragraph 139 with that one which is required by paragraph 98. The one which is required by paragraph 98 should be published in pamphlet form. The law is mandatory also that this statement be published but not in a newspaper.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 25, 1927.

Mr. R. L. Richardson,
Clerk, Circuit Court,
Gadsden, Alabama.

Dear Sir:

Your letter of June 20th has been received. You write as follows:

"We have in this county a great many appeals to our circuit court from the different municipal courts.

"It appears from our records that the municipal corporations lose most of these cases on appeal to our circuit court.

"Of course, we have no trouble in collecting all court costs when the defendant who appeals is convicted, but in case the defendant is successful in his appeal and the costs are against the municipality, the officers of the municipality seem to have the information that they are not supposed to pay any court costs. And especially do they seem to think that the three ($3.00) dollars, state trial tax, does not have to be paid.

"This office is especially anxious to know whether or not municipalities must pay this above three ($3.00) dollars state tax.

"If you hold that under the law they must pay, can the sheriff levy an execution on property belonging to the municipality."

In reply to the foregoing, I advise you that there is no authority of law for the payment of costs named by you. "At common law costs were not recoverable by either party, in any case, civil or criminal. They are given by statute and it is declared the law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law." R. C. Sec. 3534;

Stewart v. Hood, 10 Ala. 600.
Lee v. Smyly, 16 Ala. 773.
Dent & McGruder v. State, 42 Ala. 514.
Tuck v. State, 8 Ala. 664.

The ordinances of a municipal corporation are punitive regulations and the object of a proceeding for a violation of them is not redress for a civil injury, but the punishment of an offender against the peace and good order of society. The violation is punished by fine, or by corporal punishment, and the fine is payable into the municipal treasury, not appropriated to the compensation of individual injury suffered from the offense. The prosecution for the violation cannot be instituted otherwise than by the corporate authorities, and however grievous the wrong inflicted on an individual, is not within his control. Hence, a prosecution for a violation of a municipal ordinance, designed for the preservation of the public peace, the security of person or property or the protection of public morals, has been several times declared by this court a quasi criminal proceeding, and not a civil suit or action.

Withers v. State, 36 Ala. 252.
Brown v. Mayor of Mobile, 23 Ala. 722.
Furham v. Mayor, etc., present term (54 Ala. 263.)

The only statute which can be supposed to authorize the imposition of cost on municipal corporations on an unsuccessful prosecution for violation of its ordinances is Section 2779 of the Revised Code, giving costs as a matter of right to the successful party in civil actions at law. The prosecution not being a civil action, does not fall within this statute, and extending it by construction to such a prosecution, would be inconsistent with the statutory declaration that the law of costs is to be deemed penal."

City Council of Montgomery v. Foster, 54 Ala. 62.

Since this decision by our Supreme Court, we have had no additional statutes on the subject here discussed. The following cases are in accorc with the above:

Town of Camden v. Block, 65 Ala. 241.
City of Selma v. Stewart, 67 Ala. 341.
Northern v. Hamners, 121 Ala. 589, 25 So. 817.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 28, 1927.

Mrs. A. M. Tunstall, Director,
State Child Welfare Department,
Capitol.

Dear Madam:

I acknowledge receipt of your letter of June 23rd, which reads as follows:

"In Section 4481 of the 1923 Criminal Code, provision is made for the payment of fifty cents each day for a prisoner sentenced to hard labor in a non-support case. The Code states that this money shall be paid out of the general funds of the county in which the prisoner is so convicted. Now that many county prisoners will be turned over to the state, under the abolishment of convict leasing, many probate judges and presidents of boards of revenue in the counties are under the impression that this money will not have to be paid in such cases and that the state will have to make some provision for such payment.

"In order to make this point clear, will you render a decision in this matter at your earliest convenience? In several counties notice has already been given by the president of the board of revenue that after this month payment will not be made in such cases, hence the request for an early decision."

In reply, I advise you that Section 4481, Code of 1923, is still in full force and effect. This section was not repealed by an Act approved February 18, 1927, entitled an Act "To further regulate the custody, care, maintenance and use of the county convicts by the several counties of the state through its State Board of Administration, and to repeal all laws and parts of laws in conflict herewith."

Section 6 of said Act reads as follows:

"The State Board of Administraiton shall render an accounting, annually as of January 1st of each calendar year, to and with the several counties of the State, whose convicts it keeps and uses under the provisions of this Act, and shall pay over to the proper office of the several counties, to the credit of the fine and forfeiture fund of such counties, all the net earnings of the county convicts from the said counties. 'Net earnings,' as used herein, shall be held to mean the average earning of each convict, according to his or her classification, less all expenses of cost paid under Section 3667 of said Code, cost of maintenance, guarding, feeding, clothing and all other costs and expenses actually incurred by

the State Board of Administration, based on general averages according to classification."

You will note from a reading of the foregoing section that the county still receives the benefit of the labor of its convicts. Out of the fund received by the county from the state, as the net earnings of one convicted under Section 4480, Code of 1923, and to whom the provisions of Section 4481 apply, should be deducted the sum of fifty cents for each day that the prisoner is confined at hard labor. This should be done before the sum so received is placed to the credit of the fine and forfeiture fund of said county. The sum so deducted should be placed to the credit of the general funds of the county, as this is the fund from which the fifty cents per day is payable.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

I acknowledge receipt of your letter of June 21st, in which you ask the following questions:

1. Under an Act approved February 18, 1927, what governmental instrumentality pays for the feeding of a prisoner, after the State Board of Administration has been notified of the conviction and sentencing of said prisoner, pending the arrival of the State transfer agent?
2. Under said Act, whose duty is it to notify the convict department that the prisoner has been sentenced to hard labor?

Section 6 of the Act approved February 18, 1927, specifically answers your first question. This section reads as follows:

"The State Board of Administration shall render an accounting, annually as of January 1st of each calendar year, to and with the several counties of the State whose convicts it keeps and uses under the provisions of this Act, and shall pay over to the proper office of the several counties, to the credit of the fine and forfeiture fund of said counties, all the net earnings of the county convicts from the said counties. 'Net earnings,' as used herein, shall be held to mean the average earnings of each convict, according to his or her classification, **less all expenses of cost paid under Section 3667 of said Code, cost of maintenance, guarding, food, clothing, and all other costs and expenses actually incurred by the State Board of Administration, based on general average according to classification."** (Black type supplied.)

You will note, from a reading of the foregoing section, that the State Board of Administration must feed and clothe the prisoner from the date of

his conviction to the termination of his sentence, and that the prisoner himself ultimately pays for his upkeep. The prisoner's net earnings are paid over to the fine and forfeiture fund of the county from whence he came. That is to say, all that the prisoner earns less the cost of his food, clothing, etc., must be paid into the fine and forfeiture fund.

Section 3609, Code 1923, specifically answers your second question, when it states that "the clerk of the court shall at once notify the president of the board of the jail where such convict is confined, etc."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1927.

Mr. R. G. Hawkins,
Clerk of Circuit Court,
Fort Payne, Alabama.

Dear Sir:

This acknowledges receipt of your letter of June 14th. You write as follows:

> "Is a man supposed to pay license on a garage where he is the owner, runs and operates it himself, with the help of his own boys, and occasionally picks up some unskilled worker to help lift a motor or bolt a motor down?
>
> "Please give me your opinion on this. I refer to Schedule 9, in towns of less than seven thousand inhabitants."

In reply will say that the schedule referred to as levying the license for each garage for the repair of motor vehicles has this provision: "Provided this schedule shall not apply to repair shops owned and operated by one person and in which the repair work is done wholly by the owner or proprietor." It would seem that it could make no difference whether a man employs his own sons to assist him, or uses his own sons to assist him, or employs someone else. It is, therefore, my opinion that the provisions here must be strictly contrued, since it constitutes an exemption from a tax; and, so construing it, the garage must be operated by one person and in which the repair work is done wholly by the owner or proprietor. If he has anyone to assist him no matter what the relationship, the exemption does not apply.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 6, 1927.

Hon. A. L. Hasty,
Judge of Probate,
Linden, Alabama.

Dear Sir:

I have your letter of June 21st with subpoena to witness on probate of will and citation to heir to contest will enclosed. You request that I advise you the amount of the sheriff's fee for serving each of these instruments.

The Code of 1923, Section 7255, provides that the law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law

The Code of 1923, Section 7287, provides the following fees for sheriffs for summoning witnesses: Summoning each witness and returning subpoenas—$.65.

It is true that the citation to heir to contest will is not in the form of a subpoena, but it is in the nature of a subpoena and serves the same purpose.

It is my opinion that the sheriff is entitled to a fee of $.65 for serving each of the above instruments and for making the return thereon.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 6, 1927.

Mr. Chas. W. Weaver,
Circuit Clerk, Escambia County,
Brewton, Alabama.

Dear Sir:

I received your letter of June 30th, in which you make request for opinion on the following matters:

> "In civil cases where said cases have been dismissed, settled between the parties, etc., and the costs of court have not been paid to the clerk of the court, is the state trial tax chargeable to the circuit clerk?"

You will find under Section 4½, page 248, General Acts 1919, the following provisions here set out:

> "4½. That a trial tax of three dollars be, and the same hereby is, imposed in each case, civil, criminal and in equity, which hereafter goes upon the docket of any circuit court in this state to be taxed and collected as other costs and when collected, be paid by the clerk of such court into the general funds of the state treasury."

This tax becomes a part of the cost and is collected as other costs and if the Clerk is diligent in issuing executions and placing same in the hands of the sheriff for collection, then in this instance, he will not be liable for same.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 6, 1927.

Mr. Chas. W. Weaver, Clerk,
Circuit Court of Escambia County,
Brewton, Alabama.

Dear Sir:

Your letter of June 31st has been received. You ask:

"Who should pay the premium on Circuit Clerk's official bond?"

Under Section 2658 of the Code of Alabama, 1923, you will find that the premium is paid by the county and payable out of the county treasury upon proper certificate.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 6, 1927.

Hon. J. H. Johnson,
Superintendent of Education,
Ozark, Alabama.

Dear Sir:

I have your letter of June 29th in which you ask the following question:

1. Can we call an election for the purpose of voting a local three-mill school tax in all the adjacent school districts which are not levying and collecting a local three-mill school tax?

2. Will a majority of the votes cast in this new created school district, which will be composed of one or more old districts, determine whether such tax shall or shall not be levied and collected?

In answer to question Number 1, I advise you that I am of the opinion that where the territory is adjacent the county board has authority to form it into a school district.

In answer to question Number 2, I advise that where the majority of the votes cast in the newly created school district are in favor of a district tax, the tax carries.

It, of course, must be understood, that, under the law, there is no authority for consolidating a tax district with territory which is not voting a tax, except, in the manner prescribed by Section 235 et seq., of the School Code of Alabama 1924. In other words if you have a district which is voting a tax and you want to join to it territory which is not voting a tax, separate elections must be called in the tax district and in the untaxed territory and if the election fails in either one it fails in all. See Section 236 School Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 9, 1927.

Mr. Roy Stutts,
License Inspector,
Florence, Alabama.

Dear Sir:

This acknowledges receipt of your letter of May 23rd. You write as follows:

> "Please give me the law on an automobile dealer who uses a tractor for hauling his own freight. Is he liable for license or not?
>
> "Also advise me as to a man handling washing machines, without license. He handles nothing but the machine, and is an authorized washing machine dealer. Is he liable for license or not?"

In reply will say that you will find the law with reference to the license on motor tractors in Section 18 of the Act of 1923, Acts, 1923, page 288. This section reads as follows:

> "For each motor tractor used on the highways of this State, shall be a license or privilege tax of $100.00. Provided, however, that this license shall not be collected for a tractor when run on a highway to be transferred from one point to another for use on a farm or when used on the highways for transferring what is commonly known as a portable sawmill or a well boring outfit."

If used for hauling any other kind of freight on the public highways except a portable sawmill or a well boring outfit it is immaterial that the freight hauled belongs to the owner of the tractor. He is due the license if he hauls or uses his tractor on the highways of the State for any other purposes than those named under the proviso in said Section 18.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 9, 1927.

Mr. John S. Mooring,
State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of May 21st. You write as follows:

> "Schedule 114 of the Revenue Act of 1919 levies a license on cotton warehouses, and provides that this license shall be graded according to the amount stored. If the amount of the license depends on the actual amount stored it would be always impossible to fix this amount until the close of the license year because no warehouseman knows in advance the number of bales of cotton that he will store during the year to come.

"It does not seem that it was the intention of the Legislature to fix a license which must be taken out under the provisions of the law before the business is begun and make it impossible to determine the amount of the license until the business has ended. We would like to have your opinion whether the language used in Section 117 does not really mean to fix the amount of the license according to the capacity of the warehouse for storing cotton instead of according to the amount actually stored."

In reply will say that it is my opinion that the license provided for in said Schedule 114 must be taken out each year in advance of operating such warehouses. That the person operating such warehouses must determine for himself the number of bales of cotton he will take out license for and if he should store more cotton than he has taken out license for he will be guilty of doing business without a license so far as such excess is concerned. Section 361 of the Revenue Act of 1919, under which this schedule falls clearly requires that a license shall be taken out prior to the engaging in business for which a license is required.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 11, 1927.

Hon. R. L. Gordy,
Clerk, Circuit Court,
Chatom, Alabama.

Dear Sir:

I acknowledge receipt of your letter of July 6th.

You want to know whether or not there should be charged against a defendant a separate solicitor's fee and trial tax under each count of an indictment whereunder the defendant is convicted. You state that a defendant has been convicted under two counts of an indictment, viz.: one charging the carrying of a concealed weapon, and the other charging abusive language. In such a case, you inquire whether or not you should figure in the bill of cost a separate solicitor's fee and trial tax in each of said counts under which the defendant was convicted.

I advise you that the number of counts in an indictment and convictions thereunder, have nothing to do with the amount of solicitor's fees and trial tax to be assessed against a defendant. Where there is one trial had, regardless of the number of counts in the indictment upon which the trial is based, only one trial tax and one solicitor's fee can legally be charged in such case.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 11, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

I have your letter of June 17th, in which you ask whether or not a county can rent a rest room for ladies.

Public funds cannot be expended unless there is express or necessarily implied authority for the expenditure. This was held to be the law in the following cases:

Bice, County Treasurer vs. Foshee, 97 Sou. 764.
Ensley Motor Co. vs. O'Rear, 71 Sou. 704.

There is no express authority for the renting by a county of a rest room for ladies and it is my opinion that there is no provision of law from which authority to rent such building can be necessarily implied.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1927.

Hon. Hamp Draper,
Associate Member, Board of Administration,
Capitol

Dear Sir:

I acknowledge receipt of your letter of June 24th.

You want to know whether or not the law permits the payment of a fine after a sentence therefor has been imposed.

This calls for a construction of Section 5290, Code, 1923, together with kindred statutes.

This office, on January 6, 1920, in an opinion to Hon. C. B. Rogers, President, Board of Convict Inspectors, ruled that the sentence to hard labor in lieu of a fine was merely an alternative to enforce payment, and that a convict so sentenced could legally be released on the payment of the entire fine, having worked out the additional hard labor sentence. I consider this opinion, which was rendered by one of my distinguished predecessors, the Hon. J. Q. Smith, to be grounded in the law, reason and common sense. I quote the following portions of said opinion:

"In view of the express provision for release upon the payment of the cost in Section 7635, (Section 5291, Code 1923) does this silence of Section 7634, (Section 5290, Code 1923) preclude the intention to permit the payment of a fine after sentence therefor? It would strongly indicate such purpose on the part of the lawmakers if both of these sections were part of one statute and there was no obvious reason why such specific provisions should be contained in one section and not in the other. But these two sections were not part of the same statute, nor were they enacted by the same Legislature. Section 7635 (Section 5291, Code 1923) was a supplemental act to

Section 7634 (Section 5290, Code 1923) and while they are to be construed to harmonize with one another, it has been held that it would be too strict a construction to interpret one by reference to the other, with as much critical severity as if they were sections of a single ordinary statute.

Williams v. State, 55 Ala. 166.

"To the writer, the obvious reason for including the special provision in Section 7635 (Section 5291, Code 1923) relative to discharge was to give the defendant the right to receive credit for the amount realized from his hire while working out the cost. In making the cost an item to be considered in determining the duration of the sentence, which was formerly determined solely by the amount of the fine, the benefit of the service rendered in payment thereof was given the defendant, which is not the case with the fine. To effect this, the sentence for the cost is at a certain rate per day, that the defendant's credit might be definitely determined. The sentence for the fine is different. Sections 7634 (Section 5290, Code 1923), and 7635 (Section 5291, Code 1923) Criminal Code of Alabama.

"The defendant is given the further advantage of having the time for which he can be sentenced for cost limited to ten months. That such sentence for cost does not supersede the judgment for the cost to the extent of giving it no further effect on defendant's status is shown by the holding of our court that a defendant cannot be discharged from the sentence for cost by paying merely the amount he would earn during the time for which he was sentenced, but to effect such discharge he is required to pay the entire amount of such cost.

Ex parte State, in re. Pierce, 89 Ala. 177.

Even criminal statutes are to be construed so as to effect their purpose, even if it is necessary in so doing to sacrifice the code letter of the law. Under the common law a defendant was ordered to stand committed to jail until the fine was paid (Bishop on Criminal Procedure, Vol. 1, Section 1301) and he was released on the payment thereof. Our statutes are merely enlargements of this common law rule. The sentence is the only practical alternative where the fine is not paid or judgment confessed therefor. It is simply to enforce payment by compulsory methods.

Ex parte Joice & Smith, 88 Ala. 128.

"In the case of Ryan, Treasurer, v. Collins, 196 Ala. 478, 71 So. 690, it was held that fines paid after defendants had been sentenced to hard labor therefor went to the fine and forfeiture fund, even though a local act provided that sentences to hard labor were on the county's public roads. The question under consideration here was not raised in that case, but it is worthy of note that all courts proceeded on the assumption that the payment was legally made.

"The conclusion is that the sentence to imprisonment or hard labor when the fine is not paid, or judgment confessed therefor, is merely an alternative to enforce payment, and that upon the payment of the entire fine the convict is entitled to be released from the sentence therefor."

Report of the Attorney General, 1918 to 1920, page 391.

It is my opinion that any other conclusion than the foregoing would be unfair and unjust, and would not be in keeping with the spirit of our criminal procedure. To hold otherwise would impute to the Legislature of Alabama a desire to penalize pauperism. You are, therefore, advised that said fine can be paid at any time after sentence.

The sentence in lieu of payment of fine should not be confused with the additional hard labor sentenced imposed upon a prisoner. Of course, the Governor alone could relieve the convict of the latter.

Respectfully,
CHARLIE C. McCALL,
Attorney General.

July 12, 1927.

State Tax Commission,
Capitol.
Dear Sir:
Attention of Mr. John S. Mooring.

This acknowledges receipt of your letter of July 11th. You write as follows:

"Section 363 of the Revenue Act of 1919 provides that licenses shall not be transferable."

We would like to have your opinion:

1. If a license was taken out in the name of a partnership and one partner retired from the business without engaging in any other business of the same kind, would it be considered a transfer if the surviving partner continued the business, or in other words, would the partner retaining the business be required to take out a new license?

If the partner leaving the first business begins a second business of the same character, could this partner make use of the license on that claim that he had moved the location of the business as provided in Section 308?

"We have a case in which in the dissolution of a partnership, the retiring partner took over the license in the settlement between the two parties and claims the right to use the license in his business of exactly the same character as the old business. The partner continuing the old business in the case referred to, in fact, bought a new license, in accordance with his agreement that in the dissolution, the retiring partner under this agreement should use the old license in the new business. He was cited by the license inspector for a new license and he claims that he is entitled to use the old license since he succeeded to it in the dissolution of the partnership assets and since there are, in fact, two licenses taken out for the two separate businesses."

In reply to your inquiry will say that it is my opinion that the license to the partnership composed of several individuals can be used only by such

partnership. It is a privilege given them by the state in their capacity as a partnership and is in no sense a privilege given to each one separately. It is in no sense subject to being disposed of by the partnership or any individual in the partnership. It is a privilege granted to them jointly as a partnership. It is in no sense an asset of the business which can be transferred to or used by any one else other than such partnership. If the partnership is dissolved there is no one that can use the license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1927.

Hon. L. H. Brassell, Associate Member,
State Tax Commission,
Capitol.

Dear Sir:

You wish an opinion upon the state of facts set out in the letter of February 24, 1927, to E. S. Armistead. This letter is as follows:

> "With reference to your favor of the 10th, regarding my assessment of Lot 6, Block 2, as Trustee for Beta-Beta Chapter, incorporated, beg to advise that this house is owned and used by a chapter of the Alpha Omega Fraternity which is composed of students of Birmingham-Southern College. This is a non-profit organization and is merely used by boys each year who are attending Birmingham-Southern College, as living quarters. It is my impression that fraternity houses of this character at Tuscaloosa, Auburn and at other schools are always exempt from taxation."

In reply will say that if the fraternity house in question is operated by a school fraternity, the members of which are attending school and is not rented out and no profits are received by the fraternity for its use, but is maintained solely for the use of students in such school, then, in my opinion, there will be no ad valorem tax upon such building, it being used solely for school purposes.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1927.

Hon. E. J. Garrison, Judge of Probate,
Clay County,
Ashland, Alabama.

Dear Sir:

This acknowledges receipt of your letter of July 7th. You write as follows:

> "'B' has taken out and paid for sawmill license, for the current year 1927, in Cleburne County, Alabama, paying to the Probate Judge of that

County the amounts required for State and County licenses. He now wishes to move his mill across the line into Clay County and operate it in the latter county. Is he due a State and a County license in Clay County; or is he due only a county license, if any, at all?"

The license schedule in which the license tax is placed on sawmills is Schedule 122 of Section 361 of the Revenue Act of 1919. The license referred to in each of these schedules is the State license. The beginning of Section 361 which is to be construed in connection with each schedule under Section 361 reads as follows:

"That every person, firm, company, corporation, or association engaged in any business, vocation, occupation, calling or profession hereinafter enumerated, or who shall exercise any privilege hereinafter described for which a license or privilege tax is required, shall first procure a license, and shall pay for the same, or shall pay for the exercise of such privilege the amounts hereinafter provided and comply with all other provisions of this act."

The foregoing in quotations applies to each and every schedule contained under said section, and each and every schedule contained under said section refers to a State license and not to a county license.

Section 362 of the Revenue Act of 1919 is as follows:

"There is also levied for the use of each county in the State a license or privilege tax upon each person, firm, or corporation engaged in, or who shall carry on any of the occupations, business, professions, or callings, or shall exercise any privilege or do any act for which a license is charged by the State of fifty per cent of the State license or privilege tax, except as herein otherwise provided."

It will be seen from the above that a county license can only be collected where a State license is paid unless it is otherwise provided in the schedule, some schedules otherwise provide. Schedule 122 of said Section 361 reads as follows:

"Each person, firm or corporation engaged in operating a sawmill shall pay a privilege tax according to capacity, as follows: Those having a capacity of five thousand feet or less per day, ten dollars; those having a capacity of more than five thousand and not exceeding ten thousand feet per day, twenty-five dollars; those having a capacity of more than ten thousand and not exceeding twenty-five thousand feet per day, fifty dollars; those having a capacity of more than twenty-five thousand feet per day and not exceeding fifty thousand feet per day, one hundred dollars; those having a capacity of more than fifty thousand feet per day, and not over one hundred thousand, two hundred dollars; those having a capacity of more than one hundred thousand and not over one hundred and fifty thousand, three hundred dollars; those having a capacity of more than one hundred and fifty thousand and not more than two hundred thousand, four hundred dollars; and those having a capacity of more than two hundred thousand feet, five hundred dollars."

You will see by reading this schedule that nothing is said about the county license hence the county license so far as this schedule is concerned is governed by said Section 362 and can never be collected except where a State license is collected. Section 363 of the Revenue Act of 1919 provides among other things in regard to the licenses issued under Section 361:

> "Before any person, firm, or corporation shall engage in or carry on any business or do any act for which a license by law is required, he, they, or it, except as otherwise provided, shall pay to the judge of probate of the county in which it is proposed to engage in or carry on such business or do such act, the amount required for such license, and shall comply with all the other requirements of this act; and upon the payment of such amount and a fee of fifty cents to the probate judge for the issuance of such license, and all costs and fees and penalties which shall have accrued, or for which such person, firm or corporation shall have become liable in any proceedings commenced for the collection of such license, or to enforce payment thereof, and upon compliance with all other provisions of this Act by the applicant, such judge of probate shall issue the license countersigned by him, in the form on the blank to be furnished to him by the State Auditor, which shall set forth and specify the name of the person, firm, or corporation applying therefor, the business or act which it is proposed to carry on or do thereunder, the name of the street or location where it is proposed to carry on the same, if such location shall be in a city or town and have a street number, and if not, **then the location** and amount paid for such license, and the time for which it is used; * * * and such license shall not be transferable, **nor shall it entitle the holder thereof to carry on any other business or do any other act than that named therein, nor at any other location than that therein specified.** Provided, that in case it should become necessary to remove any business for which a license is required by this section, from one location to another location in the same city or town and such business be continued as the same kind and character and by the same person or firm as that carried on at the former location, another license shall not be required for such business for the same license year."

You will see from the foregoing that the law requires that a license shall specify the business that is to be done and the location where such business is to be done and if the place of business is changed to any other place a new license is required except where the business is in an incorporated municipality it may be moved from one place to another in the same town or city without taking out another license provided the business is of the same character and carried on by the same person. You will very readily see, it seems to me, from a careful reading of this Section 363 of the Revenue Act of 1919 that when a sawmill is moved from one county to another both a State and County license must be taken out in the county to which such sawmill is removed. I think that if you will read carefully Section 361 which applies to each schedule thereunder and then read Section 362 in regard to county

licenses and then read Section 363 in regard to all licenses the matter will become plain to you without any decision to guide you. If there is any point that is not clear to you, please let me hear from you.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1927.

Hon. J. H. Hollis,
County Solicitor,
Butler, Alabama.

Dear Sir:

I acknowledge receipt of your memorandum left by you in my office in which you ask the following question:

> "A, B and C are found making whiskey at a still. Officers captured three gallons of whiskey and prosecuted them for having possession of whiskey and they are convicted. Can they be convicted for distilling afterwards, the evidence showing they were actually operating the still at time they were caught?"

In answer to your question I beg to advise that it is well settled in the decisions of this State that a single crime cannot be split up, or subdivided into two or more indictable offenses; and hence, if the State, through its authorized officers, elects to prosecute a crime in one of its phases or aspects, it cannot afterwards prosecute for the same act under color of another name. It has been also held that a plea of former conviction was good to an indictment for an assault with intent to murder, a plea of former conviction of an assault and battery with a stick in the county court, based on the same criminal act, if good although the offense charged in the indictment is felony, and the offense for which there was a former conviction is merely a misdemeanor.

Moore v. The State, 71 Ala. 307.

It will be observed that having whiskey in possession is a misdemeanor and the State elected to prosecute these parties thereunder, and they were convicted, and now you wish to prosecute them for distilling, which is a felony. Under the ruling in the above case, I am of the opinion and so advise that said persons cannot be prosecuted for distilling.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1927.

Hon. A. C. Smith, Deputy Solicitor,
Chilton County,
Clanton, Alabama.

My dear Mr. Smith:

I acknowledge receipt of your favor of May 27th, in which you ask an opinion upon the following question: Should a man who establishes a collecting agency and who does not employ any agents to solicit claims for collection or send out circulars or other notices soliciting claims for collection be required to pay a license tax?

Schedule 31 of the Revenue Bill of 1919, Acts of 1919, p. 405, each collecting agency in towns and cities of 20,000 or more inhabitants, $100.00; in towns and cities of less than 20,000, $25.00.

It is my opinion that any man in your county or city so engaged in operating a collecting agency is required to pay the license tax required by the Act of 1919, supra. The town of Clanton being a city of less than 20,000 inhabitants, anyone would be required to pay a license tax of $25.00 annually to engage in operating a collecting agency.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 15, 1927.

Mr. T. V. White, Clerk,
Board of Revenue,
Livingston, Ala.

Dear Sir:

I am in receipt of your letter of April 5th asking an opinion of this office on the following state of facts as submitted by you:

> "Can an incorporated state bank whose president is president of the Board of Revenue be the county depository under the law? In considering this we wish to call your attention to a local act approved February 26, 1889, Acts 1888-89, p. 643."

In answering your first question it will be seen by Section 312 of the Code, that the office of county treasurer is abolished in all counties having a population of not less than 55,000, according to the last federal census, except as otherwise provided by statute, local or general.

Section 316 of the Code provides for the selection of county depositories.

Section 317 provides that the Board of Revenue or courts of County Commissioners shall require adequate bond of the bank acting as depository, which bond shall be in the sum of $50,000 or such other sum as the County Commissioners or Board of Revenue shall fix, having due regard to the safety of the county funds.

"The bank or banks so designated as depositories for county funds shall be charged with all the duties and subject to the same liabilities in so far as the safe-keeping and paying out of the funds of the several counties are concerned, as are now imposed by law upon the county treasurers."

I find nothing in Section 5024 of the Code that would prevent Mr. E. F. Allison from holding the office of President of the Board of Revenue of Sumter County.

It is my opinion that the Local Act of 1888-89, p. 64, does not apply to the state of facts as given by you.

In view of Code sections heretofore cited, I am of the opinion that there is nothing to prevent Mr. E. F. Allison holding the position of president of the Board of Revenue, and also president of the Bank of York.

Report of Attorney General, 1922-23, p. 136.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 15, 1927.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

Dear Sir:

This acknowledges receipt of your letter of July 14th. In reply to your first inquiry will say that I know of no law requiring a deputy sheriff to give bond. If you know of such law please cite me to it as it will doubtless also provide how the bond must be approved. If the sheriff required the deputy to make bond to him and it is not required by statute, that, of course, will be for the sheriff to approve.

In answer to your second inquiry will say that in my opinion subsection 13 of Section 6755 of the Code of 1923 answers your question. If you have no poor house organized and established in accordance with the law of the State, then your Court of Commisisoners or Board of Revenue may make such appropriations in behalf of the paupers or indigent persons entitled to relief from the county, not exceeding six dollars per month for each person, to meet the need and expense of such paupers or indigent persons. If you have such a poor house, then I find no authority for making such appropriations.

Yours very truly,
CHARLIE C. McCALL,
Attorney General

AAE:RF
July 16, 1927.

Hon. G. H. Howard,
Judge of Probate, Elmore County,
Wetumpka, Alabama.

Dear Sir:

This acknowledges receipt of your letter of June 24th. You write as follows:

> "Please advise me by return mail whether or not the Commissioners Court may legally appropriate money to help defray the expenses of a citizen of the County when admitted in the Tubercular Camp managed by the Red Cross near the city of Montgomery or in a like institution elsewhere. Would appreciate an early reply."

In reply will say that the answer to your question is found in subdivision 13 of section 6755 of the Code. If your county has no poorhouse organized and established in accordance with the laws of this State then your Board of Revenue may make such appropriation in behalf of paupers or indigent persons entitled to relief from the county not exceeding $6.00 per calendar month for each person to meet the need and expenses of such paupers or indigent persons. If your county has a poor house then such persons must be cared for at such poor house. The fact that a person has tuberculosis does not entitle him to help unless he is a pauper also. We have in the Code beginning with Section 1266 provisions for establishing a sanitarium for tuberculosis in the State of Alabama and the conditions upon which persons so afflicted may enter such sanitarium, but nothing has ever been done so far toward establishing such sanitarium. Your Court of County Commisisoners will have to deal with persons affected with tuberculosis just as with any other person, as there is no special provision of law made for them.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
July 18, 1927

Dr. R. E. Tidwell,
State Superintendent of Education,
Montgomery, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry of July 14th enclosing inquiry of you by B. B. Baker, Superintendent of Education, Farifield, Alabama. Mr. Baker writes as follows:

> "We have this situation here: the City of Fairfield charges the Board of Education for the street improvements, paving, curbs, etc., in front of the school grounds, and we have been paying same from our operating funds. I know of no other Alabama City where such a charge is made

against the Board of Education. It has occurred to us that such payment may be illegal. The three mill tax money can be used for school purposes but school purposes usually means operation, maintenance, grounds, buildings and equipment. Can 'grounds' be extended to include street improvements in front of the grounds?

"If this point has never been presented to you before would it be possible for you to get an opinion for us from the attorney general. The matter thus far is only a friendly controversy between us and the City Council, but of course we are not anxious to pay this if we are not required legally to do so."

In reply to his inquiry will say that it is my opinion that the Board of Education is entirely without authority to use school funds for building public roads.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
July 18, 1927.

Hon. Hamp Draper,
Associate Member, Board of Administration,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of July 13th. You write as follows:

"Please refer to Section 5290 of the Criminal Code of 1923, which section refers to payment of fine and cost in hard labor cases, and advise if under this section a defendant sentenced to hard labor may pay his fine after the Court has sentenced him for so many days in lieu of payment.

"For example, if a defendant is sentenced to a term of twelve months for Petit Larceny, fined $50.00 and costs amounting to $75.00, if the defendant fails to secure the fine of $50.00 at the time of conviction the Judge sentences him to twenty days in lieu of payment of fine, can the defendant after accepting a sentence of twenty days in lieu of payment of fine pay his fine after he begins serving his sentence?

"It appears to the writer that should a defendant be allowed to pay his fine that he is also entitled to payment of any part thereof in the same manner as payment of cost, in which case the fine cannot be prorated in days due to the fact that the law provides a sliding scale for sentence in lieu of payment of fine.

"I will thank you to advise immediately whether or not a defendant sentenced to hard labor is entitled to payment of fine after having been sentenced by the Judge in lieu thereof."

In reply to your inquiry will say that where a convict fails to secure the fine and costs and is sentenced to hard labor to so many days to pay the fine

and to so many days to pay the costs, he may at any time afterwards pay the balance due on his costs after giving him credit for the number of days he has worked on the payment of the costs; that is provided for in section 5291 of the Code. It is also my opinion that he may pay the fine at any time before he has worked out the sentence for his fine; but, in paying the fine, no credit will be allowed for days that he has worked on the fine since there is no provision of law to that effect. The foregoing is in accordance with the ruling of the Attorney General in the Biennial Report of the Attorney General, 1918-1920, page 391. The conclusion reached in that opinion was that the sentence to hard labor for the fine was merely an alternative to enforce payment of the fine, and that upon the payment of the entire fine the convict is entitled to be released from the sentence for the fine.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
July 19, 1927.

Hon. Winston Huddleston,
Circuit Solicitor,
Wetumpka, Alabama.

Dear Sir:

I have your letter of July 13, 1927, with copy of the bill raising the salary of the deputy solicitor of Elmore County enclosed. You state in your letter that this bill was advertised for four weeks in an Elmore County paper and was passed by the House and the Senate and the enclosed copy shows that the bill was duly approved by the Governor on July 9, 1927. You request that I advise you whether or not the present deputy solicitor of Elmore County is entitled to the salary provided for in the bill from the date that it was approved by the Governor.

In answering the question as to whether or not the present deputy solicitor is entitled to the salary provided for in the bill we must decide whether or not the payment of such salary to the present deputy solicitor would be violative of the Constitution of Alabama, of 1901, Section 281. Such Section is as follows:

> "The salary, fees, or compensation, of any officer holding any civil office of profit under this state or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed."

The Court of Appeals of Alabama held in the case of Stone, County Treasurer, vs. State, ex rel.; Strain, 89 Sou. 824, that a court reporter holding his position under appointment had no term of office within the Constitution of 1901, Section 281, because the Act providing for his appointment gave the apointing judge the power to remove the reporter at pleasure. The opinion of the court is in part as follows:

"This act gives the appointing judge the power to remove the reporter at his pleasure, and an officer thus removable has no term of office. Term of office as that phrase is used in our Constitution can only mean a period of time fixed by law."

The Code of 1923, Section 5522, gives the several circuit solicitors the right, except as otherwise provided by law, to appoint a deputy solicitor in each county of their circuits and said section further provides that such deputies may be removed by the circuit solicitor at pleasure.

You will observe from the above that the deputy solicitor is removable at the pleasure of the circuit solicitor just as the reporter is removable at the pleasure of the appointing judge. It necessarily follows that if the reporter has no term of office within the contemplation of Section 281 of the Constitution then the deputy solicitor cannot be said to have a term of office within the contemplation of said section.

In answering the question which you propound in your letter it is not necessary for us to decide whether or not a deputy solicitor holds a civil office of profit under this state or under any county because if he has no term of office as contemplated by Section 281 of the Constitution then the increasing of his salary during his incumbency cannot be violative of said section.

In view of the above it is my opinion that the present deputy solicitor of Elmore County is entitled to the salary provided in the bill to which you refer from the date that such bill was approved by the Governor.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Rayburn:J
July 19, 1927.

Hon. J. F. King, Sheriff,
Tuscaloosa County,
Tuscaloosa, Alabama.

Dear Sir:

I acknowledge the receipt of your letter of July 16th, in which you quote the following sentence from Section 3758, Code 1923, to-wit:

"The sheriff shall receive the same fees as are allowed by law for similar services performed in the circuit court, including guard fees where defendants are confined in jail."

After quoting said sentence you propound the following question:

"Would you construe this to mean that the sheriff is entitled to guard fees, in county court, regardless of conviction, and if so, is it not a proper charge against the fine and forfeiture fund?"

In reply, I advise you that I would not so construe said sentence.

"The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."

Section 3734, Code 1923.

The guard fee here referred to can be charged only where expressly authorized by statute, and in the manner thereby authorized. To illustrate, if the judge of the county court certified that the sheriff is entitled to a certain guard fee in a liquor case, under Section 4768, Code 1923, this would be a proper charge.

The sentence quoted by you could in no event be construed to mean that a guard fee should be allowed for services in county court, where such fees are not allowed in circuit court.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
July 19, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

I have your letter of June 29th in which you ask that I advise you whether or not a garage repair shop which has already taken out license under schedule 9 and which repair shop repairs and vulcanizes tires and tubes must also take out vulcanizinfg license under Section 122.

Allen's Compilation of the Revenue Laws of Alabama, 1923, Section 303, Schedule 9, provides the amount of license to be paid for garages which are operated for the purpose of repairing motor vehicles.

Schedule 122 of the above section provides the amount of license to be paid for shops which vulcanize or double tread motor vehicle tires.

It is my opinion that one who operates a garage and also vulcanizes or double treads motor vehicles tires in said garage must pay the license provided by Schedule 9 and must also pay the license provided by Schedule 122.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Evans:J
July 21, 1927.

Hon. B. deG. Waddell, County Solicitor,
Russell County,
Seale, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry with reference to the validity of the license tax ordinance adopted by the Russell County Board of Revenue on April 5th, 1927.

This ordinance provides for license tax as follows:

One horse wagon or dray, per annum	$ 1.00
Two horse wagon or dray, per annum	1.50
One horse buggy, per annum	2.00
Hacks, etc., drawn by two horses, per annum	2.50
Animal drawn vehicles used on public roads for commercial hire, disposition of timber or other commodities:	
One horse wagon or dray, per annum	3.00
Two horse wagon or dray, per annum	3.50
Four horse wagon or dray, per annum	5.00
Six horse wagon or dray, per annum	7.50

Any other vehicle drawn by one or more horses or animals, the same amount per annum as provided for wagons drawn by the number of animals, respectively.

On automobiles operated for hire, carrying passengers:

Five passengers and not more than ten	$6.00 per annum
Ten passengers and not more than twenty	12.00 per annum
Twenty passengers or more	24.00 per annum

On motor driven trucks or automobiles used for hauling freight or materials other than pasesngers, whether used for hire or not:

Trucks ½ ton capacity	$ 7.50
Trucks over ½ ton and less than 1½ tons	11.25
Trucks over 1½ tons and less than 3 tons	25.00
Trucks over 3 tons and less than 4 tons	50.00
Trucks over 4 tons and less than 5 tons	75.00
Trucks over 5 tons	150.00

The ordinance provides for a lien in favor of Russell County, superior to all other liens, upon each vehicle for the license tax levied thereon.

In reply to your inquiry will say that, "counties are involuntary political or civil divisions of the state, created by statute to aid in the administration of government." Whatever of power they may possess, or whatever of duty may devolve upon them, originates in and is derived from legislation. They have no inherent power of taxation, nor are they, by the Constitution invested with such power—all the Constitution contemplates is the legislative delegation of such power."

State v. Street, et al, 117 Ala. 210.

Whatever power of levying taxes for the county is delegated by the Legislature is delegated to the Court of County Commissioners or other officers of like kind, as, for instance, your Board of Revenue, the agency by which all the powers of the county are exercised.

State v. Street, 117 Ala. 210.

In order to answer you question correctly it becomes necessary to inquire what power the Board of Revenue of Russell County had on the 5th day of April, 1927, to levy the license taxes provided for in said ordinance.

As already stated, whatever power it had to levy such licenses must have been delegated to it by the Legislature. This power was undoubtedly given to it by Section 13 of the Act approved September 22nd, 1915 (Acts 1915, p. 576), which was amended by Act approved February 13, 1923, (Acts 1923, page 61). The act as amended reads as follows:

> "That the Courts of County Commissioners, Boards of Revenue or other governing bodies of the several counties may, for the purpose of maintaining the public roads, bridges and ferries of the county, impose upon the owners of all vehicles, except such motor vehicles as are now exempted from payment of further license taxes by reason of payment of county and state license taxes now imposed, which are used upon the public roads of the county, a license tax and may classify such vehicles in determining the amount of the tax to be levied on each class. Provided, however, that when the owner or operator of such vehicle has paid such a license tax to the proper official or officials of the county of his residence, he shall not be required to pay such license tax to the officials of any other county, for the use of the public roads for going in or through such other county from or to the county in which he resides."

Thus stood the law up to the time that the Code of 1923 went into effect, which was on, to-wit, August 17, 1924.

As said by our Supreme Court in the case of State v. Towery, et al., 143 Ala. 49:

> "It is the well settled law of this state that the Code of Alabama * * * is not a mere compilation of the laws previously existing; but is a body of laws, duly enacted. So that laws, which previously existed, ceased to be law when omitted from said Code, and additions, which appear therein, become the law from the approval of the Act adopting the Code. Citing Dew v. Cunningham, 28 Ala. 467; Hoover v. State, 63 Ala. 30; Ex parte Thomas, 113 Ala. 1; Builders & Painters Supply Co. v. Lucas & Co., 119 Ala. 202, 210.

Sections 1 and 2 of the Act adopting the Code of 1923, read as follows: Acts 1923, p. 127:

> "Section 1. That the work prepared by James J. Mayfield under 'An Act to provide for the revision, codification, digesting, and promulgating of the public statutes of this State, both civil and criminal' approved September 30, 1919, is, as the same has been revised, amended, corrected,

and reported by the joint committee of the two houses of the Legislature, which is shown upon the sheets of manuscript signed by the Chairman and members of the joint committee, adopted and enacted as the Code of Alabama, and shall regulate, completely, so far as a statute can, the subjects to which it relates, and shall go into force and be operative on the 30th day after the date of the Governor's proclamation announcing its publication.

"Section 2. No Act passed on or after the 10th day of July, 1923, shall be repealed or affected in any manner by the adopting of this Code; but such general act amending sections of the Code of 1907, which sections have been or shall be incorporated in this Code, shall be printed in the place of and as such sections."

Since there has been no act passed affecting the subject under consideration since the 9th day of July, 1927—in fact, not since February 13, 1923, except Section 22 of Act No. 290 (Acts 1923, p. 291), approved September 13, 1923, we must, therefore, look to the Code for authority for Courts of County Commisisoners and Boards of Revenue to levy license taxes as limited by said Section 22, unless a county has a local law giving authority. I have not been cited to any such local law for Russell County, and I do not know of any such local law. I am, therefore, proceeding in this opinion as though there is no such local law.

What authority then does the Code give and how is the authority given by the Code limited by said Section 22 of the Act approved September 13, 1923? Subdivision 3 of Section 6755, embracing part of the authority given to the Court of County Commissioners, reads as follows:

"To levy a general tax, for general purposes, and a special tax for special county purposes, according to the provisions of this Code."

The foregoing has reference, necessarily, to **ad valorem** taxes provided for counties by the Code. And, if it should be construed as including license taxes, such levy would still have to be made by the Board of Revenue according to the provisions of the Code, with reference to license taxation, and we would have to follow such Code provisions as modified, of course, by statute passed on or since July 10, 1923.

The only authority for the Board of Revenue to levy a license tax on vehicles, that I have been able to find, is found in Section 1366 of the Code, as modified by said Section 22 of the Act approved September 13, 1923. Section 1366 of the Code reads as follows:

"The courts of county commissioners, boards of revenue or other governing bodies of the several counties may, for the purpose of maintaining the public roads, bridges and ferries of the county, impose upon the owners of all vehicles, except such motor vehicles as are now exempted from payment of further license taxes by reason of payment of county and state license taxes now imposed, which are used upon the public roads of the county, a license tax not to exceed one-half of state license, and may classify such vehicles in determining the amount of the tax to be levied on each class; but when the owner or operator of such

vehicle has paid such license tax to the proper official or officials of the county of his residence, he shall not be required to pay such license tax to the officials of any other county, for the use of the public roads for going in or through such other county from or to the county in which he resides."

Section 22 of the said Act approved September 13, 1923, reads as follows:

"The registration fee or license tax herein required to be paid on motor vehicles shall be in lieu of all other privilege or license taxes which the State, or any county or municipality thereof might impose, where the motor vehicle is used by the owner. Provided, that any county may levy and collect for the purpose of maintaining the public roads, bridges and ferries of the county a license tax not to exceed one-half of the State license tax on motor vehicles used for hauling timber, lumber or minerals over the roads of said county. Provided further that only one such license tax can be levied and collected on one and the same motor vehicle for one and the same period of time."

It will be observed that the Court of County Commissioners in said Section 1366 of the Code is authorized to levy "a license tax not to exceed one-half of the State license." From this, it necessarily follows that where no state license has been levied, no county license can be levied. Such, evidently, was the legislative intent. Such has been the general policy of this State, which was interrupted only during the period of time said Section 13 of the Act of 1915 was in effect. There is no license levied for the state for any horse drawn vehicle, and, in my opinion, the Board of Revenue of Russell County was without authority to levy a license tax on horse drawn vehicles.

The state does levy a license tax on motor vehicles. To what extent then may a Board of Revenue or Court of County Commissioners levy upon motor vehicles?

This question is answered by said Section 22 of the Act approved September 13, 1923. This Section, so far as necessary for this opinion reads as follows:

The registration fee or license herein required to be paid on motor vehicles shall be in lieu of all other privilege or license taxes which the state or any county or municipality thereof might impose where the motor vehicle is used by the owner. Provided, that any county may levy and collect for the purpose of maintaining the public roads, bridges and ferries of the county, a license tax not to exceed one-half of the state license tax on motor vehicles used for hauling timber, lumber, or minerals over the roads of said county. Provided further that only one such license can be levied and collected on one and the same motor vehicle for one and the same period of time.

This last provision means that where a motor vehicle is used for hauling timber, lumber or minerals over the roads of more than one county, a license in one county only can be exacted.

In the ordinance under consideration, I find no license levied in accordance with said Second 22 of the Acts of 1923, and I find no delegation of

authority by the Legislature to the county or to the Board of Revenue of the County, which, in my opinion, supports any part of said ordinance.

I am of opinion, therefore, that the Legislature had delegated neither to Russell County nor to the Board of Revenue of Russell County any authority to enact the ordinance in question and that it is invalid in all of its provisions, since the only authority it had for levying a license tax on any motor vehicle was not followed, and since the state levies no license tax on any animal drawn vehicle.

If you know of any statute, either general or local, which I have not considered in the foregoing opinion, and which in your judgment affects the authority of the Board of Revenue to pass said ordinance, please call my attention to it that I may have the opportunity of correcting this opinion accordingly, should I, after considering it, conclude that this opinion is not correct. As I am writing this opinion without the aid of brief from anyone, I may have overlooked some statutory provision material to the point in question.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

WMR:RF
July 25, 1927.

Hon. Jim Davis,
Solicitor, 10th. Judicial Circuit,
Birmingham, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of July 20th:

You want to know the proper procedure in extraditing a criminal from Havana, Cuba.

The following excerpt from Moore on Extradition, Vol. 1, pages 333 and 334 fully answers your inquiry. Said excerpt reads as follows:

> General Rules.—Where a requisition is to be made upon a foreign government for the extradition of a criminal who has fled from the United States, certain preliminary steps are necessary, which are described in the following circular:
>
> INSTRUCTIONS IN RELATION TO APPLICATIONS FOR THE EXTRADITION OF FUGITIVE CRIMINALS.
>
> "1. When an extradition is sought for an offense of which the State courts have jurisdiction, the request must come from the Governor of the State. When sought for an offense against the United States, the application should be made through the Attorney General or the proper Executive Department. All requests for the institution of proceedings for extradition should be addressed to the Secretary of State and forwarded to the Department of State, accompanied by the necessary papers as herein stated, and furnishing the full name of the person

proposed for designation by the President to receive and convey the prisoner to the United States.

"2. The existing treaty provisions between the United States and foreign powers in reference to extradition provide that the surrender shall only be made: Upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her commitment for trial if the crime had been there committed.

"The evidence required to be used in the preliminary examination in the foreign state is as follows:—

"(1) If the fugitive has been convicted and escaped thereafter, a transcript of the record of conviction and judgment duly certified under the seal of the court, with the personal certificate of the judge of the court as to its genuineness and authenticated under the Great Seal of the State where the conviction was had or under the seal of the proper federal court.

"(2) If no trial has been had and an indictment has been found, a copy of the indictment, with a copy of bench warrant, if any has been issued, and the return thereto, certified and authenticated as above prescribed.

"(3) If no indictment has been found, but a prosecution has been instituted and a warrant of arrest issued, a copy of the procedure in such case, together with a copy of all the evidence upon which such warrant of arrest issued (so far as such copy can be procured), and a copy of the warrant with any return that may have been made thereto; all of which should be certified by the magistrate or judicial officer who issued the warrant, and if a justice of the peace or officer having no seal his official character should be properly certified, and the whole authenticated as above provided.

If the extradition of the fugitive is sought for several offenses, copies of the several convictions, indictments, or informations, certified and authenticated as hereinbefore directed, should be forwarded and the request for extradition should name the several offenses.

"All the papers herein enumerated should be transmitted in duplicate, one copy being required for the files of the department, and the other, duly authenticated by the Secretary of State will be returned with the President's warrant for the use of the agent who may be designated to receive the fugitive.

"3. By the practice of some of the countries with which the United States have treaties to entitle copies of depositions to be received in evidence, the party producing them is required to attest under oath that they are true copies of the original depositions, and it is therefore desirable that such agent either from a comparison of the copies with the originals or from having been present at the attestations of the copies, should be prepared to make such declaration. When the original depositions are forwarded such declaration is not required.

"A strict compliance with these formal requirements may save to

the parties seeking the extradition of the fugitive criminal much delay and expense."

If I can be of further service to you, command me fully,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
July 25, 1927.

Hon. D. S. Barber,
Judge of Probate,
Heflin, Alabama.

Dear Sir:

I have your letter of July 12th in which you state that Sheriff Rowell of Cleburne County has a daughter, who is a deputy sheriff and who is under twenty-one years of age, and that she is not under bond. You further state that she filed a claim with the commissioners' court for her salary of seventy-five dollars per month, and request that I advise you if this claim is legal.

I understood, in my telephone conversation with you today, that the daughter of Sheriff Rowell is acting as his chief deputy, and I am giving you my opinion of the matter to which you refer with that understanding.

The Code of 1923, Section 10188, provides for the appointment of a chief deputy sheriff and provides that his salary shall be paid out of the county treasury.

The Code of 1923, Section 2575, provides in part as follows:

> "The persons who are ineligible to, and disqualified for holding office under the authority of this state are those who are not qualified electors, except as otherwise expressly provided."

The Code of 1923, Section 361, provides that a person must be twenty-one years of age to be a qualified elector of this state.

The question which we must decide in answering your inquiry is whether or not a chief deputy sheriff holds an office under the authority of this state.

The office of deputy sheriff was created by legislative enactment and the law provides that he shall be paid from public funds.

It is my opinion that a chief deputy holds an office under the authority of this state. It necessarily follows that he must be a qualified elector of the state.

In view of the above, it is my opinion, that a person who is not a qualified elector of the state cannot draw compensation for services as chief deputy sheriff.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

McCALL:J
July 26, 1927.

Mr. H. C. Hood, Superintendent,
Blount County Board of Education,
Oneonta, Alabama.

Dear Sir:

I have your letter of July 25th in which you state that you are planning to divide the county into two districts, making one small district and putting the remainder of the county in one district. You also state to me by this plan several of the districts that now have the district tax will be included in this large district, which is to vote the district tax.

You inquire whether or not the districts already having a district tax will be required to vote in this election. You further ask if the election fails to carry for the district tax, what effect this will have on the districts that already have the district tax.

In my opinion, the power to outline the boundaries of school districts lies within the county board of education. In a previously written opinion by a former Attorney General, it has been held that a county may be divided into not less than two districts for the purpose of voting special three mill district taxes. This, of course, means that the county board of education may divide that territory under its control into not less than two school districts for the purpose of requesting the call of tax elections therein. In Blount County the town of Oneonta is under a city board of education, and consequently the corporate limits of that town constitute one district for district tax purposes, which cannot be enlarged by adding rural territory thereto. This is because Section 237 of the School Code of 1924, has been held unconstitutional by the Attorney General some time ago. That territory outside of Oneonta can be divided into not less than two districts by following Section 235 et seq., of the School Code.

Your attention is invited to Sections 235, et seq., of the School Code of 1924 providing for the consolidation of school districts for tax purposes.

In my opinion, each of the districts now having a district tax will have to vote in the proposed election. This is made plain by Sections 235 and 236 of the School Code. Separate elections will have to be called in each and every tax and school district, and if the election fails in any one of the districts, it fails in all, and, in the words of the statute:

> "Then said consolidation shall not be made and each district shall remain as before, with the same taxing privileges."
>
> School Code, 1924, Sec. 236.

In other words, if the tax fails in any one of the districts, then it fails in all, and the situation is the same as it was before the particular election was called.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

BRASSELL:J
July 26, 1927.

Hon. M. V. Henry, Treasurer,
Jefferson County.
Birmingham, Alabama.

Dear Sir:

In request for an opinion of this office by you of recent date upon the following:

"By Act of the Legislature of Alabama approved April 20, 1911, (Local Laws of Alabama, 1911, 371) an inferior court was established in precincts 21 and 37 in this county. By act of the Legislature of July 12, 1915, (Local Acts, 1915, 231) there was established an inferior court in this county comprising precincts 21 and 37, as well as other precincts. By act of the Legislature of September 10, 1919, (Local Acts, 1919, 121) there was established an inferior criminal court for Jefferson County in which it was provided among other things that all process issuing out of such Court should be addressed to the Sheriff of Jefferson County, Alabama, to be executed by himself or his deputy. By act of the Legislature, 1923 (Local Acts, 1923, 16), the act of establishing such inferior criminal court above mentioned was amended so as to provide among other things the following:

"Section 17. That the judge of the said court shall have the power and authority to appoint four executive officers who shall hold office during the pleasure of the judge, and the constable of precinct 37 shall be one of the executive officers and shall be ex-officio Marshal of said court of misdemeanors. And the duties of the four executive officers shall be to execute all processes of said court entrusted to them; to make such investigation of crime as shall be required of them by the judge of said court, and shall perform any other duties that may be necessary to detect and prosecute crime in Jefferson County. That said executive officers shall be designated and known as Marshals of Jefferson County Court of Misdemeanors, and each shall receive an annual salary of Fifteen Hundred ($1,500.00) Dollars, to be paid out of the county treasury of Jefferson County, Alabama, in equal monthly installments, upon warrants drawn by the judge of said court upon the county treasurer of said county."

"Doc. Carlyle, Constable of Precinct 37, and an officer of the court under local act of 1915 above referred to has presented to me for payment five warrants signed by the Judge of said Inferior Criminal Court for the payment of his salary as Marshal of said Inferior Court for the months of February, March, April, May and June, 1927. My information is that the said Carlyle performed no service whatsoever as such Marshal during said months, although he has presented himself to the Court on the first of each of said months and has indicated his willingness to render service as such Marshal. I am in doubt as to whether said Carlyle, who has continuously served and acted as Constable of said Municipal Court can also act as Marshal of the Inferior Criminal Court drawing a salary as such Marshal and receiving at the

same time the fees and compensation attached to his office as Constable. In this connection I refer you to the case of State vs. Lea, 99 Sou. 170."

"Being in doubt concerning my duty in the premises, I respectfully ask you to advise me as to whether it is my duty as such Treasurer to pay the warrants in favor of said Carlyle as such Marshal."

I find no inhibition in Section 280 of the Constitution against you paying the salary provided by Section 17, Local Acts, 1923, page 16, for the marshal of that court, and in my opinion the case of State ex rel Griswold v. Lea, 99 Sou. 170, would not apply and that you may safely pay the salary provided by said Act. If the judge signs the warrant for the payment of said salary it is the duty of the treasurer to pay same.

Biennial Reports of Attorney General, 1918-20, 109.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

CCMc:RF
July 26, 1927.

Hon. I. G. Hendon,
Superintendent of Education, Randolph County,
Wedowee, Alabama.

Dear Sir:

I have your letter of July 23rd. in which you state that district tax elections were held in several districts in Randolph County recently, and that in several of these districts the vote was against the district tax. You request an opinion as to the minimum time which must expire before you can hold another election in each of these districts.

In my opinion there is no minimum time, but if the matter is presented to the Commissioners' Court, or other like governing body, it may call an election immediately.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

HAYNES:J
July 26, 1927.

Hon. W. E. Merrill, President,
Board of Revenue of Shelby County,
Columbiana, Alabama.

Dear Sir:

I have your letter of June 22nd in which you request that I advise you whether or not the county can pay for an audit showing the financial condition of the county which you have recently had made. I also received a letter from Honorable Oliver Miles, Clerk of the Board of Revenue of

Shelby County, in which he states that he made the audit which you referred to in your letter, and he requests that I advise him whether or not he can make a charge for such audit.

The Act creating the Board of Revenue of Shelby County is found in the Local Acts of 1911, p. 154. This Act, among other things, provides:

> "The Board of Revenue of Shelby County, may, whenever they deem it necessary, employ a clerk for such time or times, as his services may be necessary and pay him out of the County Treasury."

There are two questions to be answered in answering the above. First. Whether or not the county has legal authority to pay for the audit which has been made; and second, whether or not the Clerk of the Board of Revenue can be paid an amount in addition to his salary for making the audit.

The Code of 1923, Section 6766, provides that Boards of Revenue shall make a semi-annual publication showing the receipts and expenditures of money for the county.

On May 17, 1921, the Attorney General rendered an opinion to Hon. Chas. E. McCall, Chief Examiner of Accounts, in which he held that Boards of Revenue have authority to pay for audits of the books of the county, and that this authority is incidental to the powers which have been expressly conferred by law.

The Code of 1923, Section 5024, provides that no Judge of Probate or member of a Board of Revenue or other state or county officer shall take any contract for work or services for the county, and said section provides a penalty for the violation thereof.

In answering the question as to whether or not you are forbidden by the above Section 5024 to accept compensation for making an audit of books of the county, we must determine whether or not you are a county officer.

In the case of State v. Sanders, 65 So. 378, our Supreme Court held that the State Health Officer is not an officer of the State, but that he is an officer of the State Board of Health. The opinion of the Court contains the following:

> "No part of the sovereign power of the State is by the statute delegated to appellee although he is named in the statute as the State Health Officer. The delegation of such authority and power is to the State Board of Health which is appellee's creator and master, whom he serves. He does not serve the State; he serves the Board which elects him."

In the case of Harrington v. State, 76 So. 422, the Court held that a county health officer is not a county officer. The opinion of the Court in this case, contains the following:

> "When we speak of a public officer as a state, county or municipal officer, we usually mean a person, who by lawful authority has been invested with a part of the sovereign functions of government."

Again, should it be decided that the Clerk of the Board of Revenue of

Shelby County was in fact an officer under the Constitution of the State, we are still of the opinion that the auditing of the Treasurer's books of Shelby County by the clerk of the Board of Revenue and by the request of the Board is the performance of services not originally contemplated among the duties prescribed by statute of the clerk, and the adding of additional duties on him, entitles him to extra compensation for such services. This doctrine was upheld by the reports of the Attorney General, 1918-20, p. 313, and later affirmed by the Supreme Court in the case of Knight v. Hill, 212 Ala. 280.

In view of the above, it is my opinion, that the Board of Revenue has authority to pay for the audit which you mentioned in your letter and that you as Clerk of the Board of Revenue are not a county officer, and that you are entitled to compensation for making the audit to which you refer, and further should you be held to be a county officer, I am of the opinion that for the reason given in the latter clause of this opinion; viz.: that the duties are additional duties imposed, you would be entitled to the additional compensation.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

TEK:ML
July 26, 1927.

Hon. G. S. Smith,
County Superintendent of Education,
Vernon, Alabama.

Dear Sir:

This is to acknowledge the receipt of your inquiry of July 21st. You inquire whether or not the County Board of Education of your county has authority of law to bring suit for damages sustained, and whether or not such suit should be brought in the name of the Board of Education of Lamar County.

Under the Acts of 1919, page 567, Article 5, a County Board of Education is an independent governmental agency and a quasi corporation with the right to sue and the implied right to be sued. The authorities are well in accord as to this point.

Kimmons v. Jefferson County Board of Education, 204 Alabama, 384.

Board of Education of Escambia County v. Watts, 95 So. 498.

It is apparent from your letter that the contract in question was made with the heating concern by the County Board of Education and not by any other governmental agency. Therefore it appears proper that your Board of Education in view of the foregoing authorities should bring the suit in

its name. You may use the county three mill tax or bonus fund in compensating attorneys for their services in this regard.

Hoping that this expression furnishes you the desired information, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

HAYNES:J
July 26, 1927.

Hon. I. G. Hendon, Superintendent,
Randolph County Board of Education,
Wedowee, Alabama.

Dear Sir:

I am in receipt of your letter of July 25th in which you ask if there is any way to register those who have become twenty-one years of age since last registration.

You will find that Sections 375 and 378 of the Code of 1923 cover the question of registration of voters. You could have, under Section 376, had your Commissioners' Court make an order requiring the books to be opened during July of this year, but they would have had to be in session ten working days, and July will be gone before this could be done now. Under the law as it applies to Randolph County and other small counties, I do not see how you can make provision for registration now if you failed to do this during the month of July of this year.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

BRASSELL:J
July 27, 1927.

Mr. A. R. Lightsey,
District Game Warden,
Centreville, Alabama.

Dear Sir:

Your letter of July 21, 1927, requests an opinion on the following statement of facts:

> "We have several coal mines in the upper part of this county, and they run coal washers by pumping the water from the creek and through the washer and then back into the creek, which pollutes the waters of the creek so that it is black and kills the fish.
>
> "I refer you to Section 4060 of the criminal code, and ask your opinion if this party is guilty under that section."

In my opinion, it is not a violation of Section 4060 of the Code of Alabama for coal mines to run coal washers by pumping the water from the creek through the washer and back to the creek.

> "The wants of agriculture, manufacture, commerce, invention and all the arts and sciences require that some changes must be tolerated in the flow of natural streams in their adaption to beneficial uses; reasonable diminution of quantity, temporary detention followed by release in increased volume as well as some detraction from their natural purity are necessary to be submitted to by the individual for the greater good of the public, but the water must not be diverted from its channel, or so diminished in its volume, or so corrupted or polluted as practically to destroy or greatly impair its value to the lower reparian proprietors."
>
> Tenn. Coal, Iron & R. R. Co. v. Hamilton, 100 Ala. 252.

Section 4060 has application where the poisoning is accomplished **with the purpose** of taking fish, etc.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JJH:ML
July 28, 1927.

Hon. E. J. Garrison, Judge,
Probate Court, Clay County,
Ashland, Alabama.

Dear Sir:

We have your request for an opinion of this office based on the following facts:

> "I find from the minutes of the commissioners' court that said court at its February term, 1922, transferred $10,000.00 from the general fund of the county to the road fund. I find from the treasurer's books, that at the time of said transfer the general fund of the county was in debt and had no surplus funds; the record shows that the general fund at said date was more than $10,000.00 in debt. In order to be able to make said transfer, the court at said term borrowed on tax anticipation certificates, the sum of $20,000.00; and this amount was paid later, out of the general fund. As a result of this transfer and another transfer of like nature the general fund of the county has been in debt ever since.
>
> "I desire a ruling from your office as to whether the county depository by order of the present commissioners' court can legally transfer the $10,000.00 from the road fund back to the general fund."

It has long been an established principle of law that public funds may not be lawfully used unless there be some expressed authority for such expenditure or use or such authority arises by necessary implication from the provisions of the law.

Bice, County Treasurer, v. Foshee, 97 Sou. 764.
Walker v. Bridgeforth, County Treas., 9 Ala. App. 257.

Again in the case of Phoenix Carpet v. State, 118 Ala. 143, our Supreme Court held that counties had no inherent power and that they have only such powers as are delegated to them by law, and, must have expressed authority of law to sanction their acts.

Under the statement of facts given in your request, I find no authority of law, either expressed or implied, authorizing or sanctioning the acts of the Commissioners' Court of your county in making this transfer of funds, and following the law as laid down in the authorities cited above, I hold that the transfer was without authority of law and that the Commissioners' Court of your county would have the authority to transfer the fund back to the general fund. This seems to be the effect of the holding of the Supreme Court in the case of Rhodes v. Marengo Co. Bank, 205 Ala. 667.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
July 28, 1927.

Hon. Herschell Larrimore,
Tax Collector,
Hon. W. B. Reeder,
Tax Collector Elect,
Florence, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of July 26, 1927, in which you ask to be advised when the Tax Collector elect goes into office.

I have considered Sections 3045 and 2570 of the Code of Alabama referred to by you in your request for this opinion. They seem to be in conflict on the subject, but notwithstanding the conflict in these two sections, the matter is clarified by a provision in the Revenue Act, approved August 22, 1927, which was passed by the Legislature after the Code of 1923 went into effect, said provision is as follows:

> "Section 86A. That the term of office of all county tax assessors and all county tax collectors be and is hereby extended for a period of two years from the expiration of their present term of office; the incumbent to hold office until his successor is elected and qualified."
>
> "Section 86B. There shall be elected at the general election in November, 1926, a Tax Assessor and a Tax Collector for each county in the State, who shall perform such duties as are prescribed by this act, or as may now or hereafter, be provided by law, and whose term of office shall be four years beginning October 1, 1927."

The above quoted provisions may be found on page 198 of the Acts of the Legislature of 1923.

Therefore considering the above provisions of the Act of the Legislature approved August 22, 1923, I am of the opinion and so advise that the newly elected Tax Collector will take office on October 1, 1927.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

AAE:ML
July 29, 1927.

Hon. William L. Harrison,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter together with a copy of a letter to you from Mr. W. Marvin Scott. Mr. Scott cites as authority for Justices of the Peace to try persons charged with violations of the law with reference to automobiles, Section 3334 of the Code of 1923. This section has heretofore been carefully considered by me and I find in it no authority for Justices of the Peace other than a preliminary hearing. The "immediate hearing" spoken of there is a preliminary hearing to ascertain whether or not the person must be bound over for trial to some court having final jurisdiction. There is no intimation of giving Justices of the Peace final jurisdiction in such cases. While in my opinion it makes no material difference as to the meaning of the clause; "and be entitled to an immediate hearing or admission to bail," still, it is perfectly apparent that there is a clerical omission of the letter F before the letters O. R. and that the clause was evidently intended to read: and be entitled to an immediate hearing for admission to bail. There is no doubt of course that the word magistrate as used in said section includes Justices of the Peace. In fact I think it was Justices of the Peace who were had in mind at the time by the Legislature. The whole purpose of this section was that no person traveling through the country should be detained any longer than was absolutely necessary, that when arrested he should be taken at once before a Justice of the Peace and get a preliminary hearing. If the Justice of the Peace on preliminary hearing should think that such person should be held for trial he must put him under bond to appear before some court having final jurisdiction of the offense, otherwise to discharge the defendant. The letter of Mr. Scott seems to dwell upon the proposition as to what was meant by the words "the nearest magistrate" and seems to think that if magistrate means Justice of the Peace then said Section 3334 conferred jurisdiction upon Justice of the Peace to finally try and determine the case. It seems perfectly clear to us that was no attempt to confer jurisdiction upon anybody but simply to require the person making the arrest to take the person arrested immediately before a Justice of the Peace to determine whether or not he should be bound over to a court of competent jurisdiction for trial or be discharged.

I find nothing in the letter from Mr. Scott which should in any way modify the opinion heretofore given you with reference to the jurisdiction of Justices of the Peace.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
August 2, 1927.

Mr. J. D. Longshore,
Tax Assessor, Lauderdale County,
Florence, Alabama.

Dear Sir:

This acknowledges receipt of your letter of July 30th. You write as follows:

> "The county wide three mill tax was voted upon in this county for ten years in 1916 and was passed. The first collection by the collector was in 1917. The three mill county wide tax was voted on again in 1926. The county was redistricted and a three mill district tax passed with the exception of four districts. These districts, of which one includes the city had a three mill district tax existing before the last election. They now claim they are due one year taxes before new election.
>
> "Please advise me in regard to the above. Is it lawful for me to collect the 1927 tax, that is, special three mill district tax, after the county wide three mill tax is out, without a new election?"

In reply will say that the district three mill tax voted at any time can never extend beyond the time voted for the county three mill tax. If the county three mill tax, which was levied prior to the time a district three mill tax was levied, ended with the collection of 1926, the district three mill tax so voted could not extend beyond the collection of 1926. In other words a district three mill tax can never be levied for a longer time than the county three mill tax has been levied for.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

WMR:RF
August 9, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I acknowledge receipt of your letter of July 27th, which reads as follows, to-wit:

> "I am attaching hereto a claim filed by the Leak Company, Mont-

gomery, Alabama, for funeral expenses of Virgil Murphy. The claim as you will note is recommended for payment by the Board of Administration.

"Please advise whether or not under the law this claim can be paid from the Convict Funds, State Treasury or from any other funds.

"For your ready reference I call your attention to Section 5318, Volume 2, Code of Alabama, 1923.

"When you make reply please return the claim."

Section 5318, Code 1923, which is the only statute pertinent to this inquiry so far as I am able to ascertain, reads as follows:

"When execution of sentence is suspended or respited to another date, the same shall be noted on the warrant and on arrival of such date the warden shall proceed with such execution; and if he should be pardoned, or his sentence commuted by the Governor, no execution shall be had, but in such case, as well as when the sentence is executed, the warden shall return the warrant and certificate, with a statement of any such act and with his proceedings indorsed thereon, **together with the statement that the body of the convict was decently buried** or delievered to his relatives or friends, naming them, or to some other person by consent of the convict, naming such person, and naming two or more witnesses to the fact that the convict consented that his body might be delivered to such person, to the Clerk of the Court in which sentence was passed, who shall record said warrant and return in the minutes of the Court. The State shall pay transportation charges of the body back to the home of the condemned person where his or her family or friends cannot pay such expenses, this fact to be determined by the Board of Administration."

In response to your inquiry, I advise you that under the authority contained in the above quoted section of the Code, this claim should be paid by the State. The Convict Fund is the logical fund from which such expenditure should come. You are therefore advised that this claim is a proper and legal charge against the Convict Fund.

Under the aforementioned section, it is mandatory that the warden certify that the person executed **"was decently buried,"** etc.

It follows that the carrying out of this mandate may call for the expenditure of public funds. If relatives and friends desire to bear this expense, there is no inhibition of law against such. However, the duty devolves upon the State to give a decent burial to those whom it has executed.

I herewith enclose the claim which you enclosed in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

CCMc:RF
August 10, 1927.

Hon. Charles E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of August 9th, enclosing letter dated July 14, 1927, from Hon. F. C. Turner, Judge of Probate, Chatom, Alabama, in which he asks whether or not there is any authority for the county to pay for an adding machine and typewriter for the County Superintendent of Education.

I invite your attention to paragraph 137 of the School Code of 1924 which reads in part as follows:

> "The County Board of Revenue or Court of County Commissioners shall also provide necessary furniture, office equipment, stationery, postage, forms, and supplies required by the County Superintendent of Education and his assistants."

The provision of the law in this regard are mandatory and in my opinion the expression "office equipment" covers an adding machine and a typewriter and it is the duty of the Commissioners Court to furnish these to the County Superintendent of Education.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:b
August 10, 1927.

State Tax Commission,
Capitol.

Dear Sirs:

I have carefully examined the return made by the Masonic Building Association of Houston County, with its home located in Dothan, Alabama, and I find nothing shown in the return, nor am I informed of any fact which would exempt from taxation the shares of capital stock; nor am I informed of any fact which would exempt the real or personal property of said corporation from taxation. Unless said corporation shall show you such facts as will exempt the shares of capital stock or the property of said corporation from taxation, it will be your duty to see that assessments are made as provided by law.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:b
August 10, 1927.

Hon. E. M. Moore,
Judge of Probate of Randolph County,
Wedowee, Alabama.

Dear Sir:

I am in receipt of your letter of August 9th. You request an opinion on the following statement of facts:

"Can the Court of County Commissioners take a part of one political precinct and add to another?"

In view of Section 425 of the Code of 1923, I am of the opinion that the Board of Revenue or Court of County Commissioners may alter or arrange the election precincts in their respective counties, whenever they see fit to do so.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JJH:RF
August 12, 1927.

Hon. R. L. Gordy,
Clerk and Register,
Chatom, Alabama.

Dear Sir:

Your inquiry of August 10th, relative to solicitors' fees in certain cases and how the costs should be pro rated has been received. It is my opinion that when three or four or more persons are indicted for an offense and one of the number pleads guilty to the offense this is tantamount to a severance and a regular solicitor's fee should be charged, and the costs up to that time should be pro rated among all the defendants and the defendant pleading guilty should pay only his pro rata share and so on, but without question I think he would have to pay the full solicitor's fee. In the second instance if a party should plead guilty later on he should be required to pay full solicitor's fee and the costs should be pro rated as stated above and this rule should be followed until all the cases are disposed of. However, should two or more plead guilty at the same time then only one solicitor's fee should be charged.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:b
August 12, 1927.

Hon. Charles E. McCall,
Chief Examiner of Public Accounts,
Capitol.

Dear Sir:

You make of this office the following inquiry:

"Can the Tax Collector of Lauderdale County legally be employed and serve as Clerk of the Jury Commission of said County?"

In my opinion your question is clearly answered by Sections 8581, 8587 and 8588 of the Code of Alabama, 1923.

Section 8581 provides that no person, except as otherwise provided, shall be eligible to be appointed or to hold office as jury commissioner or clerk of a commission, who holds any office under the Federal, State, County or Municipal governments, nor who is a deputy or clerk, assistant clerk or employee of any such offices, nor who is, or becomes employed by any person or corporation who is a party to any suit triable by juries pending in any state court of record in the county, etc.

It will be noted that this section, 8581, provides that no person, except as otherwise provided, shall be eligible to be appointed clerk of a Commission, meaning a jury commission, who holds any state or county office. The Tax Collector of a County is clearly a County officer and would fall under this inhibition unless it should be elsewhere provided that the Tax Collector could hold the place of clerk of a jury commission.

Section 8587 provides that the Clerk of the Circuit Court may hold such clerkship in counties having 75,000 or less population; but it does not provide that a Tax Collector may hold such position; nor that any other officer may hold such position except the Clerk of the Circuit Court.

Section 8588 provides that in counties having more than 75,000 population, as shown by the last Federal census preceding his employment, the commission, meaning the jury commission, may employ a clerk who shall hold no other office during the term of his employment.

I find no other provision with reference to the employment of a clerk of the jury commission, than is found in these three sections first named. It clearly appears from a consideration of these three sections that no county officer, except the Clerk of the Circuit Court, can be employed as the clerk of a jury commission, and such circuit clerk can be employed only in counties having 75,000 population, or less, according to the last preceding Federal census. There is no provision anywhere made for such clerkship to be held by the Tax Collector of a county. In fact, all of the provisions on the subject prohibit such holding.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
August 12, 1927.

Hon. C. J. Falkner,
Sheriff, Shelby County,
Columbiana, Alabama.

Dear Sir:

I have your request for an opinion by this office under date August 9, 1927. You write as follows:

> "I have in Sheriff's office a man acting as bookkeeper, he does not hold commission nor is under oath, as a deputy, neither does he do any outside work, as a deputy sheriff."
>
> "Can he buy script, not for me, but for himself, (He does not hold state and county license) without violating a law?"

From your letter it does not seem to me that the bookkeeper is such an officer as defined under Section 5016 of the Code of Alabama, 1923. However, under Schedule 119 of the Revenue Code each person dealing in witness script is required to pay an annual license of twenty-five dollars.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:b
August 12, 1927.

Hon. Frank J. Davis, Member,
Board of Revenue of Morgan County,
Decatur, Alabama.

Dear Sir:

I acknowledge receipt of your letter of August 8th, in which you request to be advised whether or not the Board of Revenue of your county can legally hold meetings and transact business outside of Precinct Number One in Decatur, Alabama.

I understand from your letter that the courthouse of Morgan County was destroyed by fire on November 12, 1926, and that it has not been rebuilt or repaired and that your Board of Revenue has rented temporary quarters for the county officers and courts near the old courthouse site in the City of Decatur. This situation is amply provided for by Section 214 of the Code of Alabama, 1923, which is as follows:

> "WHEN COURTHOUSE CANNOT BE OCCUPIED, COURT HELD ELSEWHERE.—When the courthouse of any county is damaged or destroyed, or is undergoing repair so as to interfere with the sittings of the courts or the occupancy of offices therein, such courts may sit, and such offices may be kept, at such other place in the city, town or village where such courts and offices are required by law to be held and kept, as may be provided by the court of county commissioners

or board of revenue; or, in case of emergency, such place as may be provided by the judge of probate, sheriff and clerk of the circuit court."

In view of the above cited Code Section, I am of the opinion and so advise that it will be perfectly legal for the Board of Revenue to hold its sessions and transact its business in temporary quarters provided for by the Board of Revenue anywhere in the City of Decatur.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
August 12, 1927.

Dr. S. W. Welch,
State Health Officer,
Montgomery, Alabama.

Dear Sir:

In answer to your letter of August 9, 1927, in which you request to be advised what persons can obtain a license to peddle medicines or other things in the several counties free of charge, and how such persons can obtain said license. I advise that this matter is fully covered in Schedule 80, at page 425, of the Acts of the Legislature of 1919, which is in force and effect at this time, and is as follows:

"Schedule 80. PEDDLERS OF MEDICINE:—Peddlers of medicine or other articles of like character, one hundred dollars for each county in which they peddle, fifty dollars of said amount to be paid to the county, said fifty dollars being the county license. Peddlers of merchandise other than medicine, fifteen dollars for each county in which they peddle. Peddlers except peddlers of medicine, who are otherwise licensed and except peddlers of tinware, woodenware, stone or clay hollowware, tanners, who manufacture leather goods, when traveling in vehicles shall pay thirty-five dollars for each county in which they peddle. Provided, that no peddler's license shall be required of Union and Confederate veterans of the Civil War, nor of persons totally blind, nor of persons who are physically disabled to do manual labor, who shall obtain a certificate from the County Health Officer as to such disability, nor shall this schedule be construed to require a license of peddlers of fish, oysters, game, fish meats, fruits and all farm products raised by the seller."

Persons obtaining certificates from the County Health Officers under the above schedule should present said certificates to the Probate Judge of the county in which they wish to peddle and the Probate Judge will issue the license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
August 12, 1927.

Hon. Hamp Draper,
State Board of Administration,
Capitol.

Dear Sir:

I have your letter of recent date in which you request that I advise you as to the method of ascertaining when the sentences of convicts who are sentenced to hard labor for the county will expire.

Whenever a convict is sentenced to hard labor for the county the day of sentence is included in computing the time which the convict must serve, that is the convict is allowed credit for the day on which he is sentenced. I give the following example: A convict who is sentenced today to ten days hard labor will be allowed one day's credit on his sentence from midnight of the 10th, to midnight of the 11th. By adding the remainder of nine days to the 11th, we find that the sentence will expire at midnight of the 20th. The convict would therefore be entitled to his release on the morning of the 21st.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

WMR:ML
August 13, 1927.

Hon. S. D. Kilgore, Sheriff,
Walker County,
Jasper, Alabama.

Dear Sir:

I acknowledge receipt of your letter of June 30th.

> "I shall thank you to give me your opinion as to the proper fees to be charged based on the following statement of facts: Suppose I procure a search warrant for the premises of A, go there and execute it and find a quantity of prohibited liquors—am I entitled to charge up against him a fee of ten cents per mile for each mile traveled in going to and returning from said premises? Section 4768, Code, 1923.
>
> "If A is arrested in connection with the above described liquors may I also charge an additional fee of seizure as set out in Section 4654, Code, 1923? May I make an additional charge of ten cents per mile for each mile traveled in going to and from the place of the arrest of the defendant as set out in Section 3741, Code, 1923? In reading the Chapter on Intoxicating Liquors, I am led to the conclusion that each of the above items are separate and distinct charges, all proper items of cost in the same case."

In answer to the foregoing, I advise you that only one seizure fee can be legally charged. The amount of said fee is based upon the quantity of contraband liquor seized, as provided by Section 4654, Code, 1923.

It is also my opinion, and I so advise, that you are not entitled to an additional mileage fee. That is to say, under the facts set out above, you are entitled to only ten cents per mile in going to and from the place of arrest. The items here considered are not separate and distinct charges.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
August 13, 1927.

Hon. Charles E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

In re request for an opinion by this office of May 20th, based on the following facts:

"I am writing you in compliance with your request to get a written opinion from the Attorney General in regard to the construction of an act passed by the last Legislature and approved by the Governor on February 18, 1927, which is Senate Bill No. 63, by Williams, amending Section 4039 of the Code of 1923.

"In the last sentence of the first paragraph of this act, in regard to officers getting their costs from the Fine and Forfeiture Funds of the counties, this act says:

" 'It shall further apply to the fees of the officers of the trial court, arising on an appeal, in cases where the defendant has appealed from a conviction, the punishment fixed being otherwise than imprisonment in the state penitentiary, AND THE JUDGMENT OF THE TRIAL COURT IS AFFIRMED, provided, that defendant be first proved insolvent by the return of the execution "no property found." '

"You will note that there is no mention of a case where an appeal was made to the Supreme Court, and the case dismissed. In the case of Virgil Murphy, appeal was made, transcript sent in to the high court and was afterwards dismissed. In as much as this bill was originally introduced in order to permit the officers of the various courts to get their fees from the fine and forfeiture funds, and as a dismissal has the same force and effect as if the same had been affirmed by the high court, it appears to the writer to be reasonable that the above quoted provision should apply where a case is dismissed the same as if it had been affirmed."

In my opinion the clerk of the circuit court of Houston County is not entitled to fees in the case of the State vs. Virgil Murphy. The docket of the Supreme Court affirmatively shows that the appeal in that case was

dismissed November 18, 1926, the act amending Section 4039 of the Code of 1923 being approved February 18, 1927. He is, therefore, not entitled to collect under said act for services rendered prior to the approval of said act.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:b.
August 15, 1927.

Hon. A. H. Eubank,
Tax Collector,
Montgomery, Alabama.

Dear Sir:

In re your request for an opinion based upon the following statement of facts:

"A man owns a piece of real estate and personal property. He sells the real estate and either carries or disposes of the personal property. Is the real estate responsible for the personal?"

Section 3054, of the Code of 1923, provides that—

"After the first day of January the collector must make a personal demand in writing upon delinquent tax payers or their agents charged with the duty of paying their taxes, whenever they may be found, for the amount of their taxes and fees, and whenever unable to find them, to make a demand by registered mail directed to his last known place of residence or business, return card demanded."

Section 3054, of the Code of 1923, provides that—

"After the first day of January of each year, the Tax Collector must proceed without delay, to levy upon the personal property of delinquent tax payers for the payment of their taxes, and after having given ten days' notice of the time and place of sale, with a description of the property to be sold, etc."

"The proceeds arising from such sale shall be applied to the payment of the expenses of the sale, and of the taxes, interest and fees due from such tax payer."

Section 3061, Code of Alabama, 1923.

"No property, whether exempt by law for taxation or not, shall be exempt from levy and sale for the payment of taxes and the fees and charges lawfully incurred in assessing and collecting taxes against the owner thereof."

Section 3062, Code, 1923.

Section 3063 provides for garnishment proceedings by the tax collector for the collection of delinquent taxes.

"When no personal property can be found, out of which the taxes of any delinquent tax payer can be collected or an amount insufficient to fully satisfy such taxes, the real estate of such tax payer or the real estate upon which such taxes are a lien, shall be sold for the payment thereof or of the balance due thereon." * * *
Section 3067, Code, 1923.

In my opinion after the sale of the personal property has been had, the tax collector may proceed to sell the real estate of the delinquent tax payer.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:RF
August 15, 1927.

Hon. A. L. Hasty,
Judge of Probate,
Linden, Alabama.

Dear Sir:

I have your letter in which you request that I advise you whether or not the tax collector has the legal right to ask for a decree of sale of land for payment of taxes when there is a sufficient amount of personal property to pay the same. You also ask if it is legal to mail notice to delinquent tax payer or if such notice should be delivered in person in cases where list of delinquent tax payers has been filed with the probate judge.

The Code of 1923, Section 3060, provides for the sale of personal property for payment of taxes.

The Code of 1923, Section 3067, provides for the sale of real estate when no personal property can be found or when a sufficient amount of personal property of the delinquent tax payer cannot be found to fully satisfy such taxes. Said section further provides that the failure of the tax collector to so exhaust such personal property shall not invalidate the sale of any real estate.

The Attorney General rendered an opinion to Mr. H. D. Pitts, Tax Collector, on January 26, 1925, in answer to a request for advice as to whether or not real estate could be sold where personal property was insufficient to pay the taxes. Such opinion is in part as follows:

"In my opinion, it was the legislative intent that the personal property, if any can be found, shall first be sold for the payment of taxes. If this is insufficient, then the proceeds of sale of the personal property, after payment of legal costs in connection with such sale, must be applied on such taxes and the lands of such tax payer must then be sold, as provided by statute, to pay the balance due."

The General Acts of 1919, page 353, Section 243 (Allen's Compilation of the Revenue Laws of Alabama of 1923, page 125, Section 222) provides that the Probate Judge shall issue notices to delinquent tax payers and that

such notices must be served by the Tax Collector or his deputy, by handing a copy thereof to the party to whom it is addressed, or his agent, or by leaving a copy thereof at the residence or place of business of such party, or his agent; and with his endorsement thereon, showing how and when served or showing his reason for not serving the same.

In view of the above it is my opinion that the Tax Collector should exercise due diligence in an attempt to find personal property out of which to pay the taxes of each tax payer but that if the tax payer refuses to show him personal property out of which the taxes can be made or if the tax collector is unable to find sufficient personal property to pay such taxes then the real estate can be sold for payment of same or for payment of any balance which may be due after sale of the personal property. It is also my opinion that notice to delinquent tax payer must be served by the tax collector or his deputy, by handing a copy thereof to the party to whom it is addressed, or his agent, or by leaving a copy thereof at the residence or place of business of such party or his agent.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:RF
August 15, 1927.

Hon. Chas. E. McCall,
Examiner of Accounts,
Capitol.

Dear Sir:

In the letter dated April 27, 1927, from Mr. W. B. Sasser, forwarded to this office by you for reply, the following request for opinion is set forth:

> "Please advise me if the law permits county high school principals to place county high school treasurer's bond premium and principal's bond premium on pay roll and have paid from county high school funds.
>
> "The above has been done by principals of Conecuh County High Schools.
>
> "Also could the bonds' premium for county superintendent and treasurer of county school funds be paid by county boards of education?
>
> "Last paragraph is only a question asked me and has not been found executed in my examinations."

Section 414 of the School Code of 1924, provides for the appointment of county high school treasurer, who shall hold office for a term of three years, who shall execute bond for three thousand dollars in a surety company authorized to do business in this state, the premium on which shall be paid from the county high school treasury.

Also the premium on the bond of the high school principal is paid out of the same fund.

Code, Section 117, of the School Code of 1924, is as follows:

"Before assuming any of the duties of the office, the county superintendent of education must take the oath of office prescribed by the Constitution, and give bond in an amount to be fixed by the State Board of Education in a reputable surety company authorized to do business in Alabama, conditioned upon the faithful performance of the duties of his office, and upon the accounting and paying over to the proper authority of all moneys coming into his hands. Such bond must be filed and recorded in the office of the Judge of Probate of the County, and a certified copy of the bond must also be filed in the office of the State Board of Education for its approval."

It is my opinion that the premium on the bond of the county superintendent of education must be paid by the county. See Code, 1923, Section 2658.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Note: See 1927 School Code on payment of treasurer's bond.

TEK:b
August 15, 1927.

Hon. John W. Browder, Superintendent,
Cherokee County Board of Education,
Center, Alabama.

Dear Sir:

This is to acknowledge receipt of your request for an opinion of date August 13th.

You inquire whether or not the County Board of Education has the power to enlarge the territory of one school district by taking in a part of another district. You state that a majority of the voters of one of the districts oppose any change in the boundaries of their district.

The County Board of Education may of its own initiative fix the boundaries of any school district in its jurisdiction in which it is proposed to levy a local school tax.

Section 230, School Code of Alabama, 1924.

This section also specifies the manner of making application for a special election in any such district. This office has previously held that the County Board of Education may exercise a reasonable discretion as to the territory included in any district.

Opinions of the Attorney General, 1924-1926, page 311, to Hon. L. L. Patterson.

However, the writer takes it from your inquiry that both of the districts, or one of the districts, is now levying the special three mill tax and that the term of the levy of both districts to which you refer, or one of them, has not expired. The County Board of Education may only exercise its

discretion in the matter of fixing the boundaries of school districts when the period for which the tax was levied has expired or where neither district, or none of the territory embraced in any district, which is levying a special three mill tax. Assuming that one of the districts to which you refer is levying a special three mill tax for a period which has not yet expired, this district may not be enlarged or consolidated with contiguous territory or another school district, except that the County Board of Education may petition the Court of County Commissioners, or other governing body to call an election in each of the districts concerned including the special tax district proposed to be enlarged to determine whether a special tax for a uniform rate and time shall be voted in each and every one of the districts. Then the proposed rate in any district shall not be less than the maximum rate nor the maximum time of any other district.

Section 235 of the School Code of 1924.

And before such consolidation can be effectuated, a majority of the qualified electors of **each** and all of the districts proposed to be consolidated shall vote favorably thereon. When such has been done, the districts may be consolidated as a new district and the tax as voted shall be levied and collected in the new district as a unit.

Section 236 of the School Code of 1924.

So, it will be seen that before school districts may be consolidated, that both districts must concur in the consolidation in the manner prescribed by statute. Therefore, in the opinion of the writer, your County Board of Education may not take the step contemplated except by following the provisions of statute applicable thereto.

Please bear in mind that this opinion is written under the assumption that the territory attempted to be consolidated is comprised of districts, both of which are now levying the three mill tax or one of which is levying the tax. If it were new territory, or if the period for which the tax was levied had expired in both districts, then the County Board of Education would have the right to exercise its reasonable discretion and designate such territory as it saw fit as a school district.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to
Hon. Joe Baker, Chairman,
Board of Education of Cherokee County,
Center, Alabama.

AAE:RF
August 17, 1927.

Hon. J. C. Nation,
Judge of Probate,
Oneonta, Alabama.

Dear Sir:

This acknowledges receipt of your letter of August 14th:

In reply will say that it is immaterial for what purpose a saw mill is operated, whether for one's own use, or to saw lumber for the market, so far as the license tax on saw mills is concerned. Neither does it make any difference for what length of time the saw mill is operated, whether one day or three hundred and sixty-five days in a year. Under the law the license tax must be paid if operated at all for any purpose whatever. On a careful examination of the license schedule I find no exception provided for. The question asked me was decided by the Legislature and the courts have no discretion in the matter. Exemptions are allowed by the Legislature and not by the courts. It would be improper for us to give an opinion upon what the Legislature should have done. We can give an opinion upon what the Legislature did do only.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
August 17, 1927.

Hon. W. E. Merrell, President,
Board of Revenue,
Columbiana, Alabama.

Dear Sir:

This acknowledges receipt of your letter of August 11th. You write as follows:

> "A claim has been filed with the Board of Revenue for the amount of the premium on the bond of Mr. W. F. Fallon, License Inspector. Section 308 of the Revenue Law provides for this bond, but we are not certain that it authorizes the payment of the premium by the County; and we respectfully request your opinion as to the legality of this claim."

In reply will say that I find no provision of law for the county to pay for the premium on the bond of a License Inspector and it is my opinion that the Board of Revenue is without authority to pay for such premium.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
August 19, 1927.

Hon. Frontis Moore,
Member, State Tax Commission,
Capitol.

Dear Sir:

You ask whether or not The Texas Company of Delaware is due an annual franchise tax for the year 1927, and you state the following to be the facts:

The Texas Company of Delaware, a foreign corporation, on March 3, 1927, made application to the Secretary of State of Alabama, for qualifying as a foreign corporation to do business in this State, and paid the State the Franchise tax on the privilege of qualifying, in this State, to do business, as provided by Section 7214 of the Code of Alabama, together with all other qualification charges except the annual franchise tax required by Sections 10, 11, 11½ of Act No. 172, Acts, 1923, page 152, et seq., as amended by Act No. 263, Acts, 1923, pages 266 and 267.

The franchise tax provided by Section 7214 of the Code, 1923, is to be paid but once—Section 7216, Code, 1923. This tax is to be paid before engaging in or transacting any business in the State. It is a kind of initiation charge and in no way takes the place of the annual franchise tax provided for by said Act No. 172 as amended by said Act No. 263. The franchise tax provided for by said Section 2714 is to be paid but once, and that before engaging in or transacting any business in this State, while the franchise tax provided for by said Act No. 172 as amended by said Act No. 263 must be paid annually, including the year of initiation.

The fact that this corporation was preceded by The Texas Company of Texas, who had paid its annual franchise tax for the year, 1927, is immaterial. In contemplation of the laws of this State they are separate and distinct corporations so far as the privilege of being a corporation in this State or doing business in this State is concerned. If there are, in fact, any equities in the matter, the Legislature failed to make any provisions therefor and the courts are without power in the premises. We have no provision of law for relieving either of said corporations, under the facts, simply because one of the corporations took over the assets of the other corporation. The tax, while measured by the amount of capital employed in this State, is not a tax upon such capital, but is a tax upon the privilege of being a corporation in this State and of exercising corporate privileges. The amount of capital employed in this State is a mere means of fixing the amount of the taxes upon such privileges. This has been too often decided to be any longer a matter of doubt or for argument.

For the foregoing reasons we are of opinion that The Texas Company of Delaware are, under the facts stated, due an annual franchise tax for the year, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:b
August 19, 1927.

Hon. Roy Sanderson, Clerk,
Circuit Court of Marion County,
Hamilton, Alabama.

Dear Sir:

You requested to be advised if the Sheriff arrests a person within the County and takes him to jail under a warrant issued from the County Court or a Justice of the Peace, other than in prohibition cases, would the Sheriff be entitled to a removal fee for said service.

The Sheriff's fees and allowances in criminal cases are governed by Section 3741 of the Code of 1923. The last paragraph of this section providing for removal of prisoners and the fees therefor, clearly applies only to prisoners that are arrested in another county and brought back to the county in which the warrant of arrest is issued.

I am therefore of the opinion and so advise that the sheriff would not be entitled to a removal fee for a person arrested under a warrant from the County Court or a Justice of the Peace when the person is arrested within the county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:b
August 19, 1927.

Hon. G. H. Howard,
Judge of Probate of Elmore County,
Wetumpka, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of August 16th in which you wish to be advised whether or not the Commissioners' Court of Elmore County shall legally pay for supplies for Justices of the Peace in said County.

In answering this question, I beg to refer you to Sections 8793 and 8794 of the Code of Alabama of 1923, which are as follows:

> "Judges of Probate shall furnish the necessary blanks to the justices of the peace, notaries public, and ex-officio justices of the peace and constables in their respective counties, that are required to transact the business in their respective courts and report the cost of same to the commissioners' court or board of revenue in their respective counties for settlement."
>
> "Upon filing the cost of said blanks in the commissioners' court or board of revenue, the commissioners' court or board of revenue shall

draw warrant on the county treasurer to cover the cost of said blanks out of the funds from which the books and blanks of other county officials are paid."

These two sections of the Code will give you the desired information.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
August 22, 1927.

Hon. Price Williams,
Judge of Probate,
Mobile, Alabama.

Dear Sir:

This acknowledges receipt of your inquiry of August 17th. You write as follows:

"The Revenue Act passed by the present Legislature embodies within its scope, 'Truck Licenses,' and repeals all laws in conflict therewith.

"Section 72 of said Act, makes the delinquency of said licenses in said Act, delinquent after October 31st.—Does this make 'Truck Licenses' delinquent after October 31st. or delinquent after November 14th?

"Section 9.—Doctors:—This is a new Section and has no exemption clause for Physicians who served in the World War. Under this Act, it appears that Doctors who served in the World War are not exempt. Am I correct in this construction?"

In reply will say that, under the recent Revenue Act, it is my opinion that truck licenses become delinquent after October 31st of each year. It is also my opinion that, under said recent Revenue Act, doctors are not exempt from license tax by reason of having served in the World War. Section 9 of the recent Act was evidently intended to replace Schedule 43 of Section 361 of the General Acts, 1919.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy: State Tax Commission.

AAE:RF
August 23, 1927.

Hon. John S. Mooring,
State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of August 22nd. You write as follows:

> "Under the method of selling cigars, cigarettes and cheroots, particularly cigarettes, adopted by the larger tobacco manufacturers, a considerable number of cigars and cigarettes are given away for advertising purposes.
>
> "For instance, each time a jobber places a large order with a factory it is the custom to send him goods in excess of his order to be distributed for advertising purposes. This is not intended as an evasion of the new cigarette tax, since it has been done for years.
>
> "Inquiry has been made of this Commission whether goods so distributed require a payment of the tax under the new law. We find in the new law provision covering the case where cigarettes, cigars, etc., are delivered with other merchandise, as a bonus, but the law seems to mean in this provision, merchandise of a different character and does not seem from its language to apply to cigarettes shipped to jobbers and given away by them for advertising purposes.
>
> "We would like to have your opinion whether the jobbers, in distributing cigarettes, as herein explained, for advertising purposes, should be required to include the wholesale price of such cigarettes in determining the amount of their tax under the newly enacted law."

In reply will say that it is my opinion that jobbers in distributing cigarettes as explained in your letter for advertising purposes should not be required to include the wholesale price of such cigarettes in determining the amount of their tax under the newly enacted law. The provision referred to by you is as follows:

> "Provided, that if any person, firm, corporation or association of persons shall include in any sale of goods, wares or merchandise, any cigars, cigarettes, cheroots, or any substitute therefor enumerated herein, or shall give with the purchase of any goods, wares, or merchandise any cigars, cigarettes, cheroots, or any substitute therefor enumerated herein, there shall be paid as a license or privilege tax hereunder an amount equal to fifteen per cent of the amount for which such goods, wares or merchandise is sold."

It is our opinion that the words goods, wares and merchandise as here used does not include cigars, cigarettes, cheroots, or any substitute therefor enumerated in said Act. Of course, cigars, cigarettes and cheroots are merchandise, but are not the merchandise spoken of in the Act. The reason for the distinction is clear. No fraud could be practiced by giving away cigars with the sale of cigars for the tax would be levied on the price obtained,

which would in fact include all the cigars; but if given with the sale of something untaxed the pretended gift might be a mere camouflage. That is why, in such a case, a tax on the goods sold, is exacted. It is on the presumption that the price of the cigars is included in the price of the goods. Hence the act levies the tax on the sale of the goods.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:b
August 23, 1927.

Hon. W. E. Merrell,
President of the Board of Revenue of Shelby County,
Columbiana, Alabama.

Dear Sir:

This acknowledges receipt of your letter of August 22nd together with a statement for services rendered as Tax Agent of Shelby County by T. A. Walton, Agent of the State Tax Commission. You write as follows:

> "Mr. T. A. Walton is the agent of the State Tax Commission for Shelby County, at a salary of $125 per month payable by the State, and the attached claim has been filed with the Board of Revenue, presumably for a salary of $75 per month to be paid by the County, supplemental to that of the State.
>
> "We respectfully request your opinion as to whether or not this claim may be legally allowed by the Board of Revenue."

In reply will say that it is my opinion that the Board of Revenue of Shelby County is without any authority to pay an agent of the State Tax Commission for services rendered under his contract with the State Tax Commission, and, furthermore, that the Board of Revenue is without any authority to employ any man to assist in the assessment of taxes in the County.

If Mr. Walton knows any authority for making this payment, let him refer you to it and then call our attention to it. We feel quite sure that there is no such authority.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:RF
August 24, 1927.

Hon. D. M. Drinkard,
Sheriff,
Linden, Alabama.

Dear Sir:

I have your letter of July 11, 1927, in which you refer to my letter of July 6th. to Judge A. L. Hasty, in which I advised him that a sheriff was entitled to a fee of sixty-five cents for serving subpoena to witness on probate of will and a fee of sixty-five cents for serving citation to heir to contest will.

The Code of 1923, Section 7287, which provides the fees of sheriffs, contains the following:

"Serving any summons not herein provided for, and making return, $1.50."

The following definition of a summons is given in Cyclopedia of Law, volume 37, page 532:

"The name of a writ commanding the sheriff or other authorized officer to notify a party to appear in court to answer a complaint made against him."

The above is the generally accepted definition of a summons. See Words and Phrases, second series, volume 4, page 786.

In view of the above it is my opinion that the citation to heir to contest will is not a summons and that you are entitled to a fee of sixty-five cents for serving same and making return thereon.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:b
August 24, 1927.

Hon. Thos. R. Fariss, Member,
Board of Registrars,
Montgomery, Alabama.

Dear Sir:

I have your letter of July 9th, in which you state that the books of registration of Montgomery County will be opened this month for the registration of voters under authority of the Code of 1923, Section 376. You request that I advise you whether or not you are authorized to register persons at this registration who are not twenty-one years of age but who will become of age before the next general election.

The General Acts of 1915, page 239, Section 22, provides for the registration of electors and such section makes express provision for the registration of minors.

You will observe from the General Acts of 1920, page 124, that no provision was made for the registration of minors.

The Code of 1923 does not contain any provision for the registration of minors.

The Attorney General rendered an opinion to Mr. A. N. Fain, Chairman, Board of Registrars, Ozark, Alabama, on February 8, 1924, in which he held that there was no law which provided for the registration of minors who were not twenty-one years of age, but who would be of age when the next general election would be held.

In view of the above it is my opinion that you have no authority to register persons who are under twenty-one years of age but who will be of age before the next election.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
August 25, 1927.

Hon. C. E. Thomas,
Superintendent of Banks,
Capitol.

Dear Sir:

I acknowledge receipt of your letter of August 12, 1927, in which you enclose a letter from H. G. Boyd, President of Peoples Savings Bank, Clanton, Alabama, and a copy of the articles of incorporation of said Bank, dated December 6, 1901. You desire to be advised if under its charter and the present banking laws said bank could do a trust business.

I have carefully examined the articles of incorporation of Peoples Savings Bank, Clanton, Alabama. These articles of incorporation were filed for record December 6, 1901, and were drawn under the Code of Alabama, 1896. These articles of incorporation do not contain any authority for said bank to do a trust business, and the Code of Alabama in effect at the time said bank was incorporated did not give banks of this State authority to engage in trust business in connection with the ordinary business of banking. I am therefore of the opinion that said Peoples Savings Bank has no authority to do a trust business in this State.

Should said bank desire to engage in operating a trust department in connection with its present banking business it will be necessary for it to comply with Sections 6388 to 6398 inclusive of the Code of 1923.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Enc.

JQS:b
August 25, 1927.

Hon. George M. Grant,
County Solicitor,
Troy, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of August 19th in which you ask to be advised whether or not it is necessary for a county solicitor to secure authority from the Attorney General to institute proceedings in the name of the State to abate a public nuisance.

In answer to your inquiry, I beg to advise you that Section 9282 of the Code of Alabama, 1923, covers the matter upon which you wish to be advised, which section reads as follows:

> "Whenever a nuisance exists, the Attorney General of the State, or the solicitor, his assistant or deputy, or any prosecuting attorney in the county or any citizen or citizens, may bring an action in equity in the name of the State of Alabama, upon the relation of such Attorney General, or such other officer or person to abate such nuisance and to perpetually enjoin the person or persons maintaining the same from further maintenance thereof."

I am of the opinion and I so advise that the injunction to abate a nuisance may be brought either by the Attorney General of the State or the solicitor, his assistant or deputy or any prosecuting attorney in the county, or any citizen in a court of equity in the name of the State of Alabama, upon the relation of such Attorney General or other **such officer or person** to abate said nuisance, and to perpetually enjoin the person or persons maintaining the same from further maintenance thereof, and that where said action is commenced by the solicitor, his assistant or any citizen on relation of the State of Alabama, the authority of the Attorney General is unnecessary.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:RF
August 25, 1927.

Hon. John F. Rogers,
Justice of the Peace,
Phoenix City, Alabama.

Dear Sir:

I have your request for an opinion on House Bill No. 847. You write as follows:

> "I am writing you for an opinion of a local law, recently passed by the Legislature, House Bill No. 847. Establishing of an inferior court in precinct No. 1 in Russell County in lieu of all justice courts in that precinct.

"I will call your attention to sections 171 and 172 of the Constitution of Alabama, which reads:

"'Section 171. The Legislature shall have the power to abolish any court, except the Supreme Court and Probate Courts, whenever its jurisdiction and function have been conferred upon some other court.'

"'Section 172. Nothing in this article shall be so construed as to abridge the term of office of any officer now in office.'"

Section 168 of the Constitution provides for the creation of an Inferior Court in lieu of Justice of the Peace in cities having as many as fifteen hundred inhabitants or more and also provides for the abolishing of Justice of the Peace. Section 171 of the Constitution quoted by you would not prevent the Legislature abolishing the office of Justice of the Peace when it creates a court in lieu thereof under Section 168 of the Constitution.

Roden v. State, 73 Sou. 657.

Section 9 of the Act, House Bill No. 847, approved August 17th, 1927, is as follows:

"Section 9. Be it further enacted, That sixty days after the appointment of said judge the terms of office of all the justices of the peace and notaries public, ex-officio justice of the peace in said precinct shall be abolished, and it shall be the duty of the incumbent of those offices to surrender their dockets, official papers and records of all kinds to the said judge; and all proceedings pending upon any such docket shall be carried forward by the judge of the court hereby established as if originally filed before him. All costs owing to justice of the peace whose office is hereby abolished, shall when collected by the judge of the hereby established court, be paid over to the officers to whom the same is due."

It is my opinion that House Bill No. 847 is a valid enactment and that you will have to transfer your dockets in accordance with said Bill.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:b
August 25, 1927.

Mrs. Mae Amiss Ashmore, Clerk,
Circuit Court of Walker County,
Jasper, Alabama.

Dear Madam:

This will acknowledge receipt of your letter of August 17th in which you ask to be advised if the Sheriff should pay to the Clerk or into the Treasury money collected by him for the County on executions.

I am of the opinion and I so advise that Sections 7812 and 7813 of the Code of Alabama, 1923, provide that it is the duty of the Sheriff when he

receives execution issued by the Clerk and collects money thereon, that he should make a return of the same and pay the money to the Clerk, and that the Clerk will distribute the same to the parties entitled thereto.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:b
August 30, 1927.

Hon. H. C. Fulton,
Member County School Board,
Anniston, Alabama.

Dear Sir:

I have your letter of August 12th in which you request that I advise you whether or not a person can be a member of the Board of Education of Piedmont, Alabama, and be a member of the County Board of Education of Calhoun County at the same time.

The School Code of 1924, Section 155, provides for the selection of the members of the City Board of Education and further provides that such members shall serve without compensation.

The Constitution of 1901, Section 280, provides that unless otherwise provided in the Constitution that no person shall hold two offices of profit at one and the same time under this State, except justices of the peace, constables, notaries public and commissioners of deeds.

In view of the fact that a member of a City Board of Education does not hold an office of profit under this State, it is my opinion that a person can be a member of the School Board of Piedmont, Alabama, and also be a member of the School Board of Calhoun County at the same time.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:b
September 1, 1927.

Hon. Sam High,
Judge of Probate,
Ashville, Alabama.

Dear Sir:

This acknowledges receipt of your letter of August 11th. You write as follows:

> "Will you please tell me if in your judgment there is any tax to be paid on an option on land, say where there is $1.00 or more paid?"

In reply will say that it is impossible for me to pass upon any paper offered for record without examining a copy of the paper. If the instru-

ment conveys any interest in real or personal property a filing tax is required. I find that options for the purchase of land are written in so many different ways that it is impossible to pass on it merely by calling it an option. Some, I have noticed, are conditional sale contracts as well as options.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:b
September 1, 1927.

Hon. William L. Harrison,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of August 31st. You wish a construction of Section 18½, page 22, of the pamphlet containing the Revenue Act, which deals with license on automobile dealers. In reply will say that in my opinion said Section 18½ means exactly what it says and that a license is required to be taken out in every county in which a dealer does business. A person having a license to sell in one county is not authorized to sell in any other county under said license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 1, 1927.

Hon. H. L. Nipper,
Member, House of Representatives,
Capitol.

Dear Sir:

I have your request for an opinion on House Bill 947. You write as follows:

> "I am writing you for an opinion on a bill which I passed recently creating a road supervisor for Marshall County.
>
> "There are four commissioners or members of the board of revenue and the Probate Judge which compose the board or court. Should one of the commissioners decide to apply for the position of Road Supervisor and only two of the members support such commissioner for the position, could the member applying for the position vote for himself to secure same?"

I wish to call your attention to Section 6750 of the Code of 1923, which is as follows:

"Commissioners ineligible to certain offices. No county commissioner is eligible to or must discharge the duties, either as principal, or deputy, of any other office."

Also Section 5024, which is as follows:

"County officer interested in county contracts, or hire of county convicts.—Any judge of probate, tax collector, tax assessor, sheriff, clerk of the circuit court, solicitor, or county treasurer, members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract for work or services of the county, or is employed in any way under such contract, or is interested in any contracts for hire of county convicts, or sells any goods or supplies to the county, or is any wise pecuniarily interested in any such contract or sale, as principal or agent, must on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; but nothing in this section shall apply to the sale or purchase of drugs or medicine for the use of prisoners or paupers."

It is my opinion that should one of the commissioners decide to make application for the position of Road Supervisor of Marshall County that he would be precluded from voting on his own application for such position, he being a member of the Court as presently constituted and it would also be against public policy for him to cast a deciding vote in electing himself to said office, though he afterwards resigned his office as a member of the court of county commissioners.

Section 7 of said Act reads as follows:

"That said road supervisor herein designated shall be elected by the court of county commissioners of Marshall County every two years; and provided further that the court of county commissioners shall within thirty days after the passage and approval of this act, elect or appoint a county road supervisor whose term of office shall expire February 28, 1929."

I therefore hold that should one of the members of the court as presently constituted, be an applicant for the position of "Road Supervisor", he could not cast a vote as a member of the court.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

B:F

September 1, 1927.

Hon W. A. Moore, Sheriff,
Conecuh County,
Evergreen, Alabama.

Dear Sir:

In reply to your request for an opinion of this office on Section 7287 of the Civil Code of Alabama, 1923, based upon the following statement of facts.

"Now what I am after is this, I go out ten miles after a person, put him in jail and maybe keep him a few days and it is decided the person is not crazy enough to send off, he is released and probably in a few days I will have to go after him and put him in jail and eventually carry him to the infirmary. Would I be entitled to collect out of the County Treasury the $2.00 for arrest and the $2.00 for guard's fee?"

Section 7287 of the Code provides:

"Services in relation to persons of unsound mind, the same fees as are allowed for similar services in other cases, to be paid out of the County Treasury, if such persons have no estate. * * *

It further provides:

"Attendance upon the Probate Court when a jury is in attendance, or upon the circuit court when a jury is in attendance, each day, to be paid out of the County Treasury, $3.00."

Said section further provides:

"That the clerk after the adjournment of each term of such court shall certify to the court of county commissioners the number of days the Sheriff so attended and the amount of his compensation thereof shall be drawn in favor of the Sheriff on the County Treasury."

Biennial Report of the Attorney General, 1920-22, page 449.

I am of the opinion that you would not be entitled to any fees in the case of insane persons until an execution has been issued returned "no property found" against his estate. Then you would only be entitled to fee for arrest and not for guard fees.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
September 1, 1927.

Hon. B. Lawrence,
County Superintendent of Education, Chilton County,
Clanton, Alabama.

Dear Sir:

I have your letter of August 8th., in which you state that there is a school in your county known as Baker School and that the deed to the school property is made to the trustees and that it provides that the property shall revert to the owner when it ceases to be used as school property. You request that I advise you whether or not the County Board can appropriate district funds to erect a building on the lands which are referred to above.

Any building which is erected on the land becomes a part of the land and a conveyance of the land also conveys any buildings thereon.

In view of the above it is my opinion that the County Board cannot make an appropriation out of district funds to erect a building on lands which will revert to the owner if they cease to be used for school purposes.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:RF
September 1, 1927.

Hon. W. B. Riley,
Superintendent of Education of Macon County,
Tuskegee, Alabama.

Dear Sir:

I have your letter of August 11th., in which you state that the Woodland School of your county burned about two years ago. You further state that the building had been insured in the State Insurance Department and that you collected $375.00 and that you still have this money. You also state that when the community prepared to rebuild that you could find no record of a deed to the State of the property but that the people built a one room school on the old site and have deeded it with two acres of land to the State and that they want to use the $375.00 insurance money to partially pay for the adding of another room to the building which they already have. You request that I advise you if the money can be used for this purpose.

The School Code of 1924, page 50, Section 108, (General Acts of 1919, page 588, Section 28) provides that the County Board of Education must insure the school buildings in the county and provides for the payment of the expense of such insurance.

The School Code of 1924, page 245, Sections 736 to 751, both inclusive, (General Acts of 1923, page 769) provides for the insuring of all buildings owned by the State, or buildings in which the State has appropriated moneys for erection or equipment thereof, etc.

This office rendered an opinion to Hon. R. E. Tidwell, State Superintendent of Education, on June 23, 1927, in which it was held that if a school building had been erected with local and State funds and the title to such property is vested in the State of Alabama and the building is insured in the manner provided by law and is later destroyed and the insurance money is paid over to the County Board of Education that such insurance money cannot be used in matching further State aid in the erection, repair or equipment of another building to replace the old one.

In view of the above it is my opinion that the $375.00 which you refer to in your letter can be used for the purpose of adding another room to the building but that it cannot be used in matching State aid in the erection of such other room.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to:
Hon. R. E. Tidwell.

JQS:b
September 2nd, 1927.

Hon. James F. Hawkins,
Tax Collector of Jefferson County,
Birmingham, Alabama.

Dear Sir:

I acknowledge receipt of your letter of September 1st, 1927, in which you ask this office to advise you on the following question:

"A bill recently enacted extends the corporate limits of the City of Bessemer—

"Under Local Acts, 1923, page 134, the tax assessor and collector are required to assess and collect municipal taxes for the City of Bessemer.

"The question arises as to whether the newly acquired territory is subject to tax, payable on October 1, 1927?"

I have examined House Bill 912 which was approved by the Governor on August 22, 1927. This bill vacates and annuls the municipal corporation of the Town of Brighton in Jefferson County, Alabama, said Legislative enactment becomes effective on September 30th, 1927. I have also examined House Bill 914, which was approved by the Governor on August 22, 1927, which is a companion bill to House Bill 912. This bill extends the corporate limits of the City of Bessemer, said extended limits of the City of Bessemer take in the former town of Brighton, and said enactment also goes into effect on September 30th, 1927.

In answering your question it is necessary to refer to Section 9 of Local Acts, 1923, page 136, which is as follows:

"Section 9. After the municipal taxes shall have been levied by the council of the said city of Bessemer and certified to the tax assessor of Jefferson County for the next succeeding tax year beginning on the 1st day of the next succeeding October, the assessor must compute the amount thereof at the rate levied by the city council of the said City of Bessemer as shown by the certified copy furnished the assessor, of the resolution or ordinance passed by the said city council of the said city of Bessemer, which will be owing by such taxpayer to the said City of Bessemer on the assessed value of the property for the then current State tax year, and enter the same in the books of assessment required to be made by the Assessor under the provisions of Section 2122 of the Code of Alabama of 1907, opposite the name of such tax payer and foot up the same, the footings to be carried from page to page, and the total amount thereof footed up, such books shall appropriately show that the assessed value as expended by the assessor is for the municipal taxes for the next succeeding municipal year, based on the assessed value for State taxation for the then current year."

Under the above quoted section I am of the opinion and so advise that the next tax year commences on October 1, 1927, and that if the City of Bessemer has furnished the Tax Assessor of Jefferson County a certified copy of the ordinance levying a tax for the next tax year, it will be the duty of the tax assessor on September 30th, 1927, to compute the amount of taxes for the City of Bessemer, at the rate levied by said City Council of the City of Bessemer, on the property within the territory embraced in House Bill 914, and it will be the duty of the Tax Collector to collect said taxes for the tax year beginning October 1st, 1927. In other words, September 30th the day House Bills 912 and 914 become effective is within the current tax year, and the taxes computed in this current tax year is to be the basis for the valuation of said property for taxation for the tax year beginning October 1, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
September 8, 1927.

Hon. G. W. Humphries,
Judge of Probate,
Bay Minette, Alabama.

Dear Sir:

I acknowledge receipt of your letter of August 31, 1927, in which you request to be advised on the following question:

"The Voters Register showing qualified voters of Baldwin County, dating from 1901 to 1925 inclusive has been filled, making it necessary that another Register dating from 1926 to 1930 inclusive be had, and all qualified voters be entered thereon.

"In furnishing list of qualified voters in the Spring election no bill was rendered for the same. I am wondering if the County can allow a claim for this work of transferring, entering names, and completing this new Register, at the regular five cents per name."

In answer to your question I advise you that the register showing qualified voters of Baldwin County referred to in your letter is provided for in Sections 396, 397 and 398 of the Code of 1923, you will observe that under Section 396, after each meeting for purging the registration list the registrars shall file the same in the office of the Judge of Probate, and on the filing of said book referred to in said section the Judge of Probate shall strike all such names from the list in his office.

The register referred to in Sections 396 and 397 of the Code, having been furnished by the registrars to the Judge of Probate, then the Judge of Probate is governed by Section 387 of the Code which provides as follows:

"1. That the Judge of Probate shall, from the registration lists heretofore returned to his office, make correct alphabetical lists of all electors registered by precincts.

"2. That the Judge of Probate shall after the first day of February, 1922, and of each year thereafter compare the lists referred to above, with the poll tax lists which have been furnished him by the tax collector, and shall revise said lists by adding to them the names of all persons who have become qualified electors since the above lists were prepared and by striking from the above lists the names of all persons who have, through any cause, lost their qualifications as electors since the preparation of the lists referred to in the above paragraph numbered one.

"3. That the revised lists referred to in the above paragraph numbered 2, shall be published by the Judge of Probate in some newspaper with a general circulation in said county on or before the 15th day of April, 1922, and each two years thereafter, and that if within ten days after said publication any person shall reasonably satisfy said Judge of Probate that any name should be added to such list, his or her name shall be added thereto and an alphabetical list of those so added within said ten days shall be published in some newspaper with a general circulation in said county, on or before the first day of May, 1922, and each two years thereafter, and the lists so published, as provided herein, shall be the official list of qualified voters in said county for the next ensuing year, but the further provision is made that it shall be the official list of qualified voters until a new list is published."

In view of the above requirements of law it is my opinion that the Probate Judges of the State are required to revise the list of qualified voters of their respective counties each year by adding the names of those who have become qualified voters since said list was prepared and by striking from said list the names of those who have become disqualified as voters and that the Probate Judges shall rearrange said list in alphabetical order. It is also my opinion that said revision should be made each year within

a reasonable time after the Tax Collectors have delivered to them as required by Section 3035 of the Code of 1923 the list of those who have paid poll tax up to February 1st. of the current year.

When this service has been performed by the Judge of Probate he is authorized under Section 402 of the Code of 1923 to employ such assistants and clerical help as may be necessary to keep and properly prepare the list of qualified electors and that such assistants shall be paid out of the County Treasury but that the entire amount spent for such assistants and clerical help shall not exceed a sum equal to the amount obtained by multiplying the number of names on said list by five.

I am of the opinion and so advise that you would be entitled to have your claim paid for the work performed under the above section of the Code for preparing the list of qualified voters of the election held last Spring.

Trusting that this answers your inquiry, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:b
September 8, 1927.

Hon. T. V. White, Clerk,
Board of Revenue of Sumter County,
Livingston, Alabama.

Dear Sir:

I have your letter of September 3rd in which you request that I advise you if the Board of Revenue of your County can make an appropriation to a community or school fair.

The Code of 1923, Section 6755, subsection 23, provides that county funds can be appropriated for the purpose of developing, advertising and promoting the various interests of the County, etc.

It is my opinion that the Board of Revenue of your County has authority under the above Section 6755 to make the appropriation which you refer to in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
September 12, 1927.

Hon Frontis Moore,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of August 30, 1927, in regard to non-par value stock of domestic corporations. You wish to have my opinion upon the method of ascertaining the value of such stock for the purpose of assessing the franchise tax.

In reply will say that there is, in my opinion, the following difference only between par value stock and non-par value stock, so far as the value thereof for assessing franchise tax is concerned:

The amount of capital stock, as measured by money, is declared in incorporating a par value stock corporation and consists of "the sum fixed by the corporate charter as the amount, measured by dollars, paid in or to be paid in, by the stockholders for the prosecution of the business of the corporation, and is a trust fund for the benefit and security of the creditors of the corporation." This amount cannot be lawfully reduced by payment of dividends to stockholders, nor can it be increased except in the manner provided by statute. Such being the case, the assessment of the franchise tax due by a par value stock corporation, being but a mathematical calculation, is a ministerial act; in the case of a non-par value stock corporation, it is my opinion that capital stock of the corporation is best defined as the assets of the corporation upon which the corporate charter is issued and which constitute a trust fund for the benefit and security of creditors of the the corporation, which cannot be legally taken from in declaring dividends to stockholders. Such assets, as are not money, are not measured by money for the purpose of incorporation. The value in money of such assets at each period of assessment of franchise tax is the correct measurement for franchise tax assessment.

In determining, at any time what constitutes the trust fund, the law with reference to trust funds must be applied. This trust fund constitutes the capital stock. Its monetary value at the time for the franchise tax assessment constitutes the measure for the franchise tax.

If all of the capital stock were payable in money, there would be no reason for non-par value stock and its franchise tax assessment would not in my opinion be different from that of a par value stock corporation. In such case there would be no reason for a non-par value incorporation. The capital stock of the corporation, in such a case, would necessarily have a par value. On the other hand, where the whole or a part of the capital stock of the corporation consists of property or property rights deeded to the corporation, this property or property rights constituting the capital stock of the corporation, its value being uncertain, in the first instance, and subject to change as measured by dollars, the value of such assets or capital stock must be determined at each assessment.

Where part of the capital stock is paid, or is payable, in money, the capital stock, as to that part remains constant while that part of the capital stock consisting of real, or personal property other than money, may vary.

Yours very truly,

CHARLIE C. McCALL,

Attorney General.

AAE:RF
September 12, 1927.

Hon. John D. Petree,
Judge of Probate, Franklin County,
Russellville, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 10th.

In reply will say that under Section 20 of the recent Revenue Act a gasoline filling station within five miles of any incorporated city or town pays the same license that is provided for filling stations in said city or town. To illustrate: The statute provides that in cities of one hundred thousand inhabitants and over where only one pump or filler is used, $50.00; and for each additional pump, $50.00. A filling station located anywhere within five miles of the corporate limits of such a city pays where only one pump or filler is used, $50.00, and for each additional pump, $50.00. This is true with reference to every incorporated city or town; any gasoline filling station is taxed just as though it were located in the city or town provided it is within five miles of the corporate limits of such city or town. A gasoline filling station located more than five miles from the corporate limits of any city or town must pay $5.00 for each pump or filler.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
September 13, 1927.

Hon. Homer R. Dudley,
Judge of Probate, Russell County,
Seale, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 9th. You write as follows:

"Please advise me at your earliest convenience, whether or not a person is liable for peddler's license who peddles fresh meats."

In reply to your inquiry will cite you the latter part of Schedule 80 of Section 361 of the Revenue Act of 1919, which provides for license on peddlers. Part of schedule referred to reads as follows:

"Nor shall this schedule be construed to require a license on peddlers of * * * fresh meats * * * raised by the seller."

If the peddler buys the meat or hogs and then peddles the fresh meat he is liable for license. If he raises the hogs himself he can then peddle the fresh meat without a license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

TEK:b
September 13, 1927.

Hon. Joe M. Pelham, Jr.,
Circuit Solicitor,
Chatom, Ala.

Dear Sir:

This is to acknowledge receipt of yours of the 12th instant. You inquire whether or not it is a violation of the law to sell alco-rub.

It is the understanding of this office that while this preparation may contain alcohol, that it is used essentially for external purposes such as rubbing, etc. It is also the understanding that the preparation called alco-rub and the alcohol contained therein is to an extent denatured.

Of course it is a violation of the law to sell any preparation containing alcohol of whatever per cent to be used for beverage purposes. However, the use of the preparation for beverage purposes and in violation of the law is a question of fact to be ascertained upon the trial of the cause or upon a presentation of the testimony to an inquisitorial body.

Opinions of the Attorney General, 1918-1920.
Humphrey v. State, 77 So. 82.

We cannot therefore advise you that the sale of alco-rub is a violation of the law unless it were proven that the preparation contained alcohol and was knowingly sold for the purpose of a beverage.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:b
September 15, 1927.

Hon. S. G. McVay, Sheriff,
Clarke County,
Grove Hill, Alabama.

Dear Sir:

I acknowledge receipt of your letter of September 10th in which you ask to be advised if sheriffs of the state are entitled to collect mileage in prohibition cases, regardless of the amount of liquors that are taken into possession.

In answer to your inquiry I beg to advise that there is no law providing mileage for sheriffs for arresting persons for violation of the prohibition law. You evidently have in mind mileage to be taxed as costs in cases where officers seize liquors and vessels under a search warrant. These fees and allowances are provided for in Section 4768 of the Code of 1923, which is as follows:

"There shall be allowed the officer making the seizure under a search warrant the sum allowed by Section 4704, of three dollars, and also the sum of two dollars additional for every day that officer shall

necessarily be employed in attending court for the purpose of causing liquors seized to be condemned, and the sum of ten cents per mile for each mile he shall travel in executing the writ, together with such reasonable sum as the court may deem just for necessary expenses incurred in transporting and providing storage for liquors and vessels seized; all such costs shall be taxed in the bill of costs and if not collected from the defendant or defendants, shall be taxed and paid as in criminal prosecutions in which the State fails, upon the court or judge or justice making an order to that effect."

Trusting that this will give you the desired information, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 16, 1927.

Hon. W. L. Pratt,
Judge of Probate,
Centreville, Alabama.

Dear Sir:

I have your request for an opinion by this office of September 15th, wherein you write as follows:

"I wish to know whether the State or County pays the cost in felony cases that are dismissed, nol prossed or acquitted in the Circuit Court of Bibb County. My understanding of the law is, that such expense in misdemeanors falls upon the County and in felony cases on the State."

It is my opinion that Senate Bill 68, approved February 18, 1927, which was an act to amend Section 4039 of the Code, fully answers you and which reads in part as follows:

"Treasurer of such county must pay the fees of the officers of the court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted and have been proved insolvent by the return of executions "no property found," or in cases in which the State enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE-b
September 19, 1927.

Hon. L. H. Brassell, Member,
State Tax Commission,
Capitol.

Dear Sir:

You wish this office to reply to question propounded to State Tax Commission by Mr. G. O. Durham, Tax Assessor of DeKalb County. The letter of Mr. Durham reads as follows:

> "Replying to yours of September 13th, I shall state that the one mill tax election mentioned in my letter of September 10th will be held on September 29th and the returns will be made, the results canvassed, and the tax levied on the next day, September 30, 1927, provided the required number vote for the tax. This will mean that the election will be held, the returns canvassed, and the tax levied during September, 1927. Please inform me, if, under the above stated conditions, I shall then be eligible to include this tax in the 1927 assessment."

In reply to the question propounded will say that it is my opinion that on examination of a copy of the ticket voted, the thirteen year period voted begins October 1, 1927, and that the Court of County Commissioners could not make the levy before that date and this levy would have to be upon the tax assessed values for assessment as of October 1, 1927, which would be collectible in regular course October 1, 1928.

Ritchie v. State, 156 Ala. 127.
Oberhons v. State, ex rel., McNamara, 173 Ala. 483.

The assessment now made for the tax assessment 1926-27 is based upon property as owned on October 1st, 1926. It could hardly be concluded from the wording of the ticket that it was the intention to make the levy retroactive.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE-b
September 19, 1927.

Mr. John L. Scogin, Sheriff,
Montgomery County,
Montgomery, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 14th. You write as follows:

> "Will you kindly advise in writing if a corporation, who is engaged in the business of executing bonds, is a qualified bondsman in a criminal case for the appearance of the defendant in court to answer a charge pending against him?"

In reply will say that it is my opinion that Article 7 of Chapter 45 of the Code of 1923, covers criminal cases and authorizes bond to be made by a surety company whose charter authorizes the making of such bonds and who have duly qualified in this state to do business here. Care should be taken that all the provisions of the law with reference to making bond by such surety companies are complied with.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
September 20, 1927.

Hon. P. B. Pepper,
County Superintendent of Education,
Greenville, Alabama.

Dear Sir:

I acknowledge receipt of your letter of September 17th in which you desire to be advised as to when the one mill school tax to be voted on in your county on September 21st will be available should same be voted favorably by the voters of Butler County.

The resolution of the Court of County Commissioners provides that said levy shall begin with the tax year 1927 and 1928. I am of the opinion that under the resolution of the Court of County Commissioners should said election be in favor of a levy of said one mill tax to be voted for on September 21, 1927, the tax will be assessed on October 1, 1927, and will be collected on October 1, 1928.

Hoping that this will give you the desired information, I am

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 20, 1927.

Hon. W. C. Johnson,
Official Court Reporter,
Grove Hill, Alabama.

Dear Sir:

I have your request for an opinion by this office wherein you write as follows:

> "Will you kindly advise me whether or not the section in the Code which says that 'all stationery and supplies to be used by such official or special reporters in their capacity, etc.,' which is Section 6741, includes a typewriter?"

By Section 6735 of the Code the court reporter shall furnish within 30 days, or such other time as the judge may prescribe to any party to a cause reported by him, upon demand being made for the same, or upon order of the presiding judge, a typewritten transcript of his stenographic notes. * * *.

6741 of the Code reads as follows:

"All stationery and supplies to be used by such official or special reporters in their capacity as such shall be furnished and paid for by the county or counties composing the respective circuits in the manner provided for the payment of the salaries of such officials. * * *."

It is my opinion and I therefore hold that the counties composing your circuit may furnish you a typewriter, and I further hold, that Sections 6735 and 6741 relating to duties and supplies of court reporters include the purchasing of a typewriter for the official use of the court reporter of said circuit.

Where circuits are composed of more than one county it would be the duty of each county to pay the pro rata share of the cost of such typewriter upon a requisition signed and approved by the judge of the circuit under Section 6741. Of course, it follows that the official court reporter cannot use such typewriter for other than official business.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

TEK:RF
September 21, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

This is to acknowledge receipt of yours of September 12th in which you ask us to advise you whether or not the assistant circuit solicitor of the fifteenth judicial circuit is entitled to the increase in salary which has been provided by a recent act of the Legislature, to-wit: House Bill 382, approved August 27, 1927, which amends Section 5526 of the Code of 1923.

Your inquiry of necessity, first involves a consideration of the section of the Code which is amended by the more recent act of the Legislature. Section 5525 of the Code of Alabama, 1923, provided that there should be appointed an assistant solicitor in any judicial circuit in this State composed of only one county of the population of not less than 65,000 inhabitants and not more than 95,000 inhabitants.

The only question which presents itself to be determined regarding the validity of Section 5526 of the Code of 1923 is whether or not this Act was in fact a local act but was attempted to be disguised as a general act. If such were the case and no notice had been published or proved as provided by the Constitution of this State, the Act would be invalid.

However, there is ample authority for this action of the Legislature, that is, in enacting section 5526. The Supreme Court of this State has decided that such is not an arbitrary fixing of the population limits so as to include only one county. And a substantial difference in population has been held to be a proper basis of classification.

The Supreme Court of Alabama, speaking through Mr. Justice Gardner, had this to say:

> "We recognize that it is our duty to sustain the act, unless it is clear beyond a reasonable doubt that it is violative of the fundamental laws. There is here a substantial difference in population, and, upon the matter of a reasonable relation of the classification to the purpose to be effected and such difference in population, much must be left to legislative discretion."

Waldon v. City of Montgomery, 108 So. 231.

In the Waldon case, last above cited, the limits of population were more restricted than in the present case. So, therefore, it is the opinion of this office that section 5526 is a general law and is not violative, through lack of notice or proof thereof, of Section 106 of the Constitution of 1901. Therefore, the Legislature may amend this Act without encountering the constitutional inhibitions of section 106 of the Constitution.

This brings us then to a consideration of whether or not the person holding the office at the time the Code section was amended would be entitled to the increase provided by the amendment. This, of necessity, involves a consideration of whether or not such action on the part of the Legislature, in increasing the salary of the assistant solicitor of the Fifteenth Judicial Circuit would fall within the inhibition of Section 281 of the Constitution of 1901, which section provides that the fees or salary of no officer under this State shall be increased or diminished during the term for which he was elected or appointed.

The question then arises, first: Whether or not an assistant circuit solicitor is an officer and holds an office under this State. There can be no doubt but that he is an officer and does hold an office under this State. Next, the question arises whether or not it is attempted to increase the salary of such officer **during his term of office.** To decide this, it is first necessary to decide whether or not such officer has a term of office or was appointed for any definite term.

Section 5527 provides that the term of office of such assistant circuit solicitor shall be at the pleasure of the circuit solicitor and that he may be removed at the pleasure of the circuit solicitor. Therefore, such officer has no **definite** term of office, as was contemplated in section 281 of the Constitution. It is very obvious that a definite term was the only period or tenure of office contemplated in the above mentioned section.

Section 281, in the opinion of the writer, can contemplate only a **definite** or a **fixed period** for which the officer holds, either by appointment or election. The authorities are well in accord as to this point, and in view of these authorities I am of the opinion that where one holds an office for an

indefinite period of time his fees or salary may be increased or diminished by the proper authority without falling within the prohibition of section 281 of the Constitution of 1901.

State v. Sanders, 187 Ala. 79.
Touart v. Callahan, 173 Ala. 457.

Therefore, in the opinion of the writer, I see no reason why you should not honor the requisition of the assistant solicitor for the amount of his salary accrued at the time the requisition was made, and as the same becomes due.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 21, 1927.

Hon. Cecil C. May,
Clerk, Circuit Court, Butler County,
Greenville, Alabama.

Dear Sir:

I am in receipt of your request for an opinion wherein you write as follows:

"In June of this year we had a case appealed from the County Court to the Circuit Court of this County and now the defendant wants to withdraw his said appeal and pay the accrued costs in the Circuit Court and remand the case back to the jurisdiction of the County Court.

"Can this be done? If so would I charge a Solicitor's Fee in the Circuit Court?

"I recall having seen something to the contrary, that is that after a case had been appealed from County Court to Circuit Court and the case docketed on the Circuit Court Docket that the said appeal could not be withdrawn."

It appears that the judgment of the county court has been superceded by the appeal to the circuit court. See ex parte Harper, 112 Sou. 96.

It is my opinion that under the authority of the Harper case supra the defendant cannot withdraw his appeal, and that the cause must be tried by the circuit court.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

TEK:ml
September 21, 1927.

Hon. Carl O. Baxter,
Superintendent of Education,
Ashville, Alabama.

Dear Sir:

This office is in receipt of your letter of August 20th. You inquire whether or not the County Board of Education of your county has authority to reimburse Mr. M. A. Adams from the local district tax fund in an amount he had advanced to secure State aid in equipping a certain school within a district in your county.

You state that since this money was borrowed and used, the district in which it was used, and to which it was advanced, has been consolidated with other territory and that there has been levied in this consolidated territory a new tax over a period of years. You inquire whether or not this amount of money may be refunded from the taxes collected in the new district.

I call your attention to Section 111 of the School Code of 1924, which provides that County Boards of Education may appropriate and use any district three mill tax that has been, or may hereafter be, voted in any school district to pay and discharge any obligation or debt which may have been or hereafter be created, to build, furnish or equip a public school building for said school district, or, to refund out of said three mill district tax to any person or corporation, who has, or may hereafter advance money for such purpose.

Without a question of a doubt, under the old district tax in District No. 36, this refund might have been made. Then, the question arises as to whether or not since this district has been consolidated with other districts, a refund may be made from three mill taxes collected in the new tax district.

This brings us to a consideration of whether or not the new tax district has, within the contemplation of Sections 111 and 112 of the School Code of 1924, reaped any benefit or is reaping any benefit from the expenditure of this money, as a whole. Necessarily any district, as a whole, must reap benefit from the erection and equipment of buildings which are used for school purposes within the district. Taking for granted that the building to which you refer is now being used for the purpose for which it was equipped by the new district, in the opinion of the writer, the new territory enjoys the benefits of such building used for school purposes to the same extent as though it had been erected and equipped subsequent to the creation of the new district.

Of course, we assume from your letter that this money was advanced with the consent of the County Board of Education and expended upon its approval, and that, if State aid were granted, the money was used in accordance with the plans of the County Board of Education and the State Board of Education to the extent required by law.

Therefore, in view of Sections 111 and 112, I advise that under the circumstances set out herein, this reimbursement may be made by the County Board of Education out of funds collected or to be collected in the school district in which the building is now located.

Of course, proper proof must be made, of the expenditure of this money, to the County Board of Education, and that the money has accordingly gone into the construction of a public school building in such territory and that the County Board of Education has accepted such building and equipment for the use of the public schools within that district.

Sections 111, 112 and 113 of the School Code are indicative of the intention of the Legislature to authorize County Boards of Education to borrow money in anticipation of the collection of taxes within the district and it was the intention of the Legislature to authorize and provide for a reimbursement of the persons from whom the money was borrowed. It being clear that the district in which the building was constructed and equipped, in accordance with the regulations of and with the approval of the County Board of Education, is enjoying the use of the building for school purposes within the district.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:RF
Septemebr 21, 1927.

Hon. W. P. Bishop,
Justice of the Peace,
Georgiana, Alabama.

Dear Sir:

I have your request for opinion by this office. You write as follows:

"Please be so kind as to advise me fully as to the recent law enacted by the legislature relative to Notary Public and ex. Off. J. P., and Banks and other officers fixing legal papers, such as deeds and contracts and mortgages."

For your information we shall quote section 6248 of the Code as amended:

"That section 6248 of the Code of Alabama, 1923, be and the same is hereby amended so as to read as follows: '6248. Who May Practice as Attorneys.—Only such persons as are regularly licensed have authority to practice law. For the purposes of this section of the Code, the practice of law is defined as follows: Whoever, (a) In a representative capacity appears as an advocate or draws papers, pleadings or documents, or performs any act in connection with proceedings pending or prospective before a court or a justice of the peace, or a body, board, committee, commission or officer constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the State or subdivision thereof; or, (b) For a consideration, reward of pecuniary benefit, present or anticipated, direct or indirect, advises or counsels another as to secular law, or draws or procures or assists in the drawing of a paper, document or instrument affecting or

relating to secular rights; or, (c) For a consideration reward or pecuniary benefit, present or anticipated, direct or indirect, does any act in a representative capacity in behalf of another tending to obtain or secure for such other the prevention or the redress of a wrong or the enforcement or establishment of a right; or, (d) As a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employe in the ordinary sense; Is Practicing Law. Nothing in this section shall be construed to prohibit any person, firm or corporation from attending to and caring for his or its own business, claims or demands; nor from preparing abstracts of title, certifying, guaranteeing or insuring titles to property, real or personal, or an interest therein, or a lien or encumbrance thereon. Any person, firm or corporation who is not a regularly licensed attorney who does an act defined in this section to be an act of practicing law, is guilty of a misdemeanor and on conviction must be punished as provided by law. And any person, firm or corporation who conspires with, or aids and abets, another person, firm or corporation in the commission of such misdemeanor must, on conviction, be punished as provided by law.'

"'Approved September 7, 1927.'"

It is my opinion that you cannot unless you are a licensed attorney prepare papers for any person, firm or corporation.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 21, 1927.

Hon. Harry K. Martin,
Judge of Probate,
Dothan, Alabama.

Dear Sir:

I have your request for an opinion construing Section 2336 of the Code of Alabama, 1923. You write as follows:

"Under Section 2336 of the Code of 1923, a petition has been filed with me with 469 names signed to it. This section of the Code uses the language: 'According to any Federal or Municipal census hereafter taken.' There has been no Federal nor Municipal census taken since the adoption of the Code of 1923. These Code Sections are based on the Acts of 1911. This Act contains a provision referring to the Federal census of 1910, which is left out in the Code of 1923.

"Please advise me as to whether or not I can act on said petition so filed with me and if so what census should I be guided by."

Section 2336 of the Code reads in part as follows:

"In cities of class 'D' upon the presentation of a petition signed by a number of qualified electors of such city as will equal three voters for every one hundred inhabitants or fraction thereof, according to any federal or municipal census **hereafter taken** * * *."

This section of the Code of 1923 went into effect the 16th of August, 1924, by a proclamation of the Governor.

You as Judge of the Probate Court must take judicial knowledge of the census, and you judicially know that there has been no federal census since 1920. It necessarily follows that the words "hereafter taken" means the federal census to be taken in 1930, or a municipal census to be taken by the city council in accordance with Sections 1751, 1752 and 1753 of the Code of 1923.

Section 2342 is as follows:

"Cities hereafter having one thousand population may adopt. All cities not now having, but which shall have a population of as much as one thousand people, according to any federal or municipal census that may be taken hereafter, shall have the benefit of the provisions of this article."

I am of the opinion and so advise you that, you cannot order an election until there has been either a federal or municipal census taken to determine the population of the city of Dothan, so that you can ascertain the required number and qualifications of the signers of such petition.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:RF
September 22, 1927.

Hon. R. H. Williams,
Judge of Probate,
Guntersville, Alabama.

Dear Sir:

I have your request for a construction of Section 5076 of the Code of Alabama, 1923. You write as follows:

"I will thank you to refer to Section 5076 of the Code of Alabama, 1923, and advise me whether in your opinion a member of the Board of Revenue of this county would be in violation of this section in voting for a brother or brother-in-law for Road Supervisor."

Section 5076 reads as follows:

"Letting Contracts to Relative or Employing Relatives of Commissioners; Penalty For.—Any member of any commissioner's court or board of revenue who shall award any contract in which the county of such commissioner or member of board of revenue is interested to any

person, related, either by blood or marriage within the fourth degree to such commissioner or member of board of revenue, or who shall employ any such relative to do any work for said county, or to act as agent for any such member in any work in which such county is interested, shall be guilty of a misdemeanor and, on conviction, shall be fined not less than ten dollars nor more than one hundred dollars."

In my opinion it would be a violation of this section for any member of the Board to vote for his brother or brother-in-law or in fact anyone coming within the fourth degree of kinship as computed by the civil law for the position of Road Supervisor.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JJH:b
September 22, 1927.

Hon. B. L. Andrews, Clerk,
Circuit Court of Dale County,
Ozark, Alabama.

Dear Sir:

Your letter of September 17th received. I note you request an opinion on the following matter:

"One A. J. Gibson was convicted in the County Court under Section 3213 of the Code of 1923, and the value of the personal property injured was proved to be $400.00. The defendant failed to pay the fine and costs, and, consequently, was sentenced to hard labor for a term of 115 days, to pay the fine. At that time Dale County leased its county convicts to Pike County and received of Pike County the sum of $75.33 for the 115 days' service.

"Now the question is this, to-wit: It is provided in Section 3212 as follows: 'And so much of the fine as may be necessary to repair the injury or loss shall go to the party injured.' Now I would like to know of you if the injured party in this cause is entitled to the entire amount of $75.33 or not."

I am of the opinion that the amount collected on the fine should be divided equally between the fine and forfeiture fund and the party whose property was injured. I find no decision construing this particular part of the statute. The case in the 63rd Ala., page 108, is the nearest approach to it.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:b
September 22, 1927.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 9th. You write as follows:

"Please examine Section 24, Revenue Law, approved July 22nd, 1927, and Schedule 89, on page 427, Acts of 1919, and advise me whether or not Section 24 of the Revenue Law, approved July 22, 1927, supersedes Section 89, as above referred to, so far as the Public Electric Utility is concerned.

"Question 2. Does said Section 24 of the Revenue Act, July 22, 1927, change, alter or amend "Street or Interurban Railroads operated by electricity or other motive power, water works, gas companies, or heating company, or other public utility? Do we collect now, under said Schedule 89, license for water works, gas company, street railroad company, heating company or other public utility, as provided by said Schedule 89?

"Question 3. I am informed that the Birmingham Electric Company owns and operates the electric power in Birmingham, and also the street railroad company and the gas plant. Will the license paid by the public electric utility company cover the street car and gas plant under Section 24 of the Revenue Act of 1927, or will each one of those plants, although owned by the Birmingham Electric Company, be liable for a separate license under said Schedule 89?

"Question 4. You will see from Section 362, page 440, Revenue Law of 1919, the following: 'There is also hereby levied for the use of each county in this state a license or privilege tax upon each person, firm or corporation engaged in, or who shall carry on any of the occupations, business, professions, or calling, or shall exercise any privilege or do any act for which a license is charged by this State of fifty per cent of the State License or privilege tax, except as herein otherwise provided.' I do not find such a clause in the Revenue Act of 1927. Will there be a county license under the Revenue Act of 1927, on Sections 13, 14, 15, 16 and 16½?"

In reply to your first question, will say that, in my opinion, Section 24 of Revenue Law approved July 22, 1927, does supersede Schedule 89 of Section 361 of the Revenue Act, 1919, so far as electric light or power plants selling current to patrons or customers is concerned.

In answer to your second question will say that, it is my opinion, that said Section 24 of the Revenue Act approved July 22, 1927, does not affect said public utilities other than electric light or power plants; all the public utilities provided for under said Schedule 89, except electric light or power plants, must continue to pay as provided by said Schedule 89.

In reply to your third question will say that it is my opinion that each of said enterprises will have to pay its license tax. The operation of the electric light and power plant will be taxed under said Section 24, while the operation of the street railroad and of the gas plant will each be taxed under said Schedule 89.

In answer to your fourth question, will say that it is my opinion that Section 362 of the Code applies to the license provided for by Sections 13, 14, 15, 16 and 16½ of the Revenue Act, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
September 23, 1927.

Hon. Bibb Graves,
Governor of Alabama,
Capitol.

Dear Sir:

You ask the opinion of this office as follows:

The State Auditor, S. H. Blan, being sick and unable to perform, in person, his official duties, while such disability exists, can the Port Improvement Bonds be legally executed?

Section 8 of Act No. 303, Acts, 1923, page 331, in providing for the execution of said bonds, provides the following:

> "They shall be signed by the Governor, the State Auditor and the State Treasurer and attested by the Secretary of State, and the great seal of the State shall be affixed thereto," etc.

It is my opinion that said provision in said Act maks it the official duty of the Auditor to sign said bond and that the act of signing falls in the category of official acts provided for by Section 811 of the Code, 1923, which reads as follows:

> "The official acts of one of these clerks, to be assigned as chief clerk by the State Auditor, shall be presumed to be by the authority of, and shall be taken as done by the State Auditor, who shall be responsible for the same."

It is, therefore, my opinion, that such chief clerk has authority to act for and in the name of the State Treasurer in executing said bonds.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
September 23, 1927.

Hon. John B. Weaver,
Judge of Probate, Winston County,
Double Springs, Alabama.

Dear Sir:

I have your letter of August 27th, in which you state that you have been informed that the Legislature passed a bill to allow the sheriff of Winston County an additional deputy and that the salary of such deputy is to be paid from the funds of the county. You request that I advise you if the above bill is constitutional.

I have examined the bill to which you refer and I find that it provides that it shall take effect from and after its approval by the Governor and the bill shows on its face that it was approved on July 21, 1927.

I am of the opinion and so advise that there is no prohibition in the Constitution or otherwise that would invalidate this enactment.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE-b
September 24, 1927.

State Tax Commission,
Capitol.

Dear Sirs:

In regard to the franchise tax of the Texas Company of Delaware for the year 1927, will say that, in my opinion, the question raised against the payment of said tax is without merit. It was suggested, as I understood, that there was no provision for return for franchise after said corporation began to do business in the State and to employ capital. The statute requiring the corporation to pay the tax and requiring the State Tax Commission to ascertain the amount to be paid are fundamental. It is true that the statute requires a return to be made within ten days afer qualifying, but this return is not controlling as to what tax shall be paid; it is to notify the State Tax Commission of the qualifying of such corporation and to assist it in ascertaining the amount of the tax. The duty is placed upon the corporation of paying the tax. The tax is due and must be paid regardless of reports or assessments. Suit can be maintained for the tax due even though no report and assessment is made.—Section 15, Revenue Act, 1923, Acts, 1923, page 166.

Sections 10, 11 and 11½ of Revenue Act, 1923, as amended by Act No. 263, Acts, 1923, 267, reads as follows:

"Section 10. Every corporation organized under the laws of this State, except strictly benevolent, educational or religious corporations, shall pay annually to the State an annual franchise tax of one dollar on each one thousand dollars of its capital stock.

"Section 11. That every corporation organized under the laws of any other state, nation, or territory, and doing business in this State, except strictly benevolent, educational or religious corporations, shall pay annually to the State an annual franchise tax of one dollar on each one thousand dollars of the actual amount of capital employed in this state. In ascertaining the annual franchise tax which shall be paid by any foreign corporation doing business in this State under this section, there shall be deducted from the amount of the capital employed by such corporation in this State, the aggregate amount of loans of money made by such corporations in this State, and which shall be secured by existing mortgage or mortgages to it on real estate in this State, and upon which mortgages there shall have been paid the recording privilege tax provided by law.

"Section 11½. Remittance for the franchise tax required by Sections 10 and 11 shall be made to the State Tax Commission, at Montgomery, Alabama, with check payable to the State Treasurer of Alabama. One-fifth of the franchise tax collected shall be apportioned by the State Tax Commission to the several counties in which the corporation does business, in proportion to the amount of taxable property of said corporation in each of said counties, and the State Auditor shall draw his warrant payable to the County Treasurer of each county in such proportion, upon certificate of the State Tax Commission."

These sections are fundamental and all the rest of statutes upon the subject are simply to aid in enforcing the provisions of said Sections 10 and 11. Section 19 of the Revenue Act, 1923, provides full authority and method for ascertaining by the State Tax Commission the amount due whether report is made or not.

A foreign corporation is not due any franchise tax until it employs capital in the State.

Section 14 of the Revenue Act, 1923, clearly shows that this tax is due for the current year no matter what time of year the foreign corporation qualifies if after qualifying they employ capital in the State. If it qualifies before July 1st, the full year's tax is due; if on, or after July 1, one-half the year's tax.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 29, 1927.

Hon. E. W. Long,
Judge of Probate,
Jasper, Alabama.

Dear Sir:

I have your request for an opinion on Section 6248 of the Code as amended. You write as follows:

"Please send me your latest opinion on An Act to amend Section 6248 of the Code of Alabama, 1923, as to who is permitted to prepare deeds, mortgages, and other legal documents."

It is my opinion, and I so advise you, that under the Section of the Code above cited, no one other than a regularly licensed attorney, can charge a fee directly for writing any deed, deed of trust, mortgage, bill of sale, will, contract or other legal papers or documents.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JQS:RF
September 30, 1927.

Miss Lummie Swindle,
Treasurer, Walker County,
Jasper, Alabama.

Dear Madam:

I acknowledge receipt of your letter of September 27, 1927, in which you ask to be advised whether or not you as Treasurer of Walker County can legally pay a salary of $200.00 per month to J. Carl Shepherd for his services as Judge of the County Court. You state in your letter that this office was created by the Legislature of 1927 and that Mr. Shepherd was appointed by the Governor to fill said office and that Mr. Shepherd was a member of the Legislature of 1927 from Walker County.

I have examined the Acts of the Legislature of Alabama being House Bill 1143 and introduced by Mr. Shepherd and that said bill was approved by the Governor on September 6, 1927, and that Mr. Shepherd was appointed the Judge of said Court created under the Act above referred to.

In answering your question I wish to call your attention to Section 59 of the Constitution which is as follows:

"No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this state, which shall have been created, or the emoluments of which have been increased during such term, except such offices as may be filled by election by the people."

This provision of the Constitution has been construed by the Supreme Court of Alabama in the case of Montgomery vs. State, ex rel Enslen, 107 Ala., page 372. In this case the facts were practically identical with the facts set out in your letter.

I am of the opinion and so advise that Mr. Shepherd cannot legally hold this office by appointment of the Governor and, therefore, you would not be justified in paying his salary out of the Treasury of Walker County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to:
Hon. Bibb Graves,
Hon. Ernest Lacy,
Hon. Benj. G. Wilson.

JWB:RF
September 30, 1927.

Hon. A. M. Camp,
Justice of the Peace,
Malone, Alabama.

Dear Sir:

I have your request for an opinion on the authority of a Justice of the Peace, relative to writing deeds, mortgages, and wills. You write as follows:

"Will you please send me the Acts of the last Legislature. Does a Justice of the Peace still have the authority to fix deeds, mortgages, wills, & etc.?"

It is my opinion and I so advise you, that under Section 6248 of the Code as amended, that you cannot, unless you are a regularly licensed attorney, charge **any fee, directly or indirectly for the writing of any deed, deed of trust, mortgage, bill of sale, contract, will or other legal paper.** This, however, does not prevent you charging the fee as fixed by law for acknowledgments.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

CCM:b
September 30, 1927.

Hon. Joel L. Sanders,
County Superintendent of Education,
Troy, Alabama.

Dear Sir:

I have your letter of September 29th requesting a construction of Paragraph 82 of the School Code of 1924 relating to the per diem and expenses of members of the County Board of Education.

I advise that, in my judgment, it would be unlawful for you to pay a

member of the County Board of Education per diem or traveling expenses for more than twelve board meetings within any one fiscal year. The fiscal year begins with and including October 1st, and ends with and including September 30th.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JJH:ML
September 30, 1927.

Hon. Bradford Cooper,
Treasurer,
Hamilton, Alabama.

Dear Sir:

I am in receipt of your letter of September 23rd making a request for an opinion on the following matter:

> "Under the law the County gets 20% of the sales of Automobile and truck tag license. Does this tag license belong to the general fund of the County or is it left up to the Commissioners Court to place it in the General Funds or the Road and Bridge Funds?"

Section 23, page 251, Revenue Code of Alabama, makes provision for the division of all moneys collected for automobile license tax and places eighty per cent of same to the credit of the State and twenty per cent to the credit of the county or town dependent upon the residence of the party procuring the tag.

It further provides that the State's part goes to the credit of a sinking fund to take care of the State's bonded indebtedness on good roads. As to the fund to which the county's part shall go the law is silent. Therefore, there being no direct provision of law providing, as to what fund it shall be placed, I am of the opinion that it would, as other taxes, go to the general fund of the County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:RF
September 30, 1927.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

I have your request for a construction of House Bill No. 314, approved August 22, 1927, as to whether said Act repeals Section 4879 of the Code of Alabama, 1923. You write as follows:

"Please inform me, in case of the insecurity of the jail building, or where there is a large number of prisoners committed, being brought to the jail at all hours by day or night, thus requiring the services of a guard, both on the out and inside of the jail proper, at all hours, if the County Board of Revenue, or Court of Commissioners, have authority under Section 4879 of the Code to provide a salary for an additional guard to those enumerated in Act H. 604 above referred to, or does Section 7 of the Act estop the Board from making such provision?"

It is my opinion that House Bill No. 314, approved August 22, 1927, takes all counties of a population of as many as 75,000 people and less than 95,000 people according to the last Federal Census or any such census thereafter taken out of the operation of Section 4879 of the Code of 1923.

In other words, it was the intent and purpose of the Legislature to rearrange the salary of the sheriff, to fix the number of deputies and guards and to fix their salaries. Thereby taking counties of the classification as fixed by the Act out of the operation of Section 4879 of the Code.

This Act is a complete enactment, and by Section 7 thereof, the Board of Revenue or other governing body of the counties that come within purview of the Act, do not possess the authority to name the guards or fix their salaries.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
September 30, 1927.

Hon. W. E. Vaughan,
Judge of Probate, Dallas County,
Selma, Alabama.

Dear Sir:

I have your letter of September 6th, in which you request that I advise you whether or not it is lawful for a county to advertise its resources in a newspaper or other periodical, and charge the cost thereof to the county general fund.

The Code of 1923, Section 6755, Subsection 23, provides that county funds can be appropriated for the purpose of developing, advertising and promoting the various interests of the county, etc.

It is my opinion that your county has authority under the above Section 6755 to make the expenditure which you refer to in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
September 30, 1927.

Hon. D. F. Crownover,
Justice of the Peace,
Oakman, Alabama.

Dear Sir:

I have your request for an opinion on House Bill No. 490. You write as follows:

"I am at a loss to know just the meaning of House Bill No. 490 passed by the last Legislature, and will thank you for an opinion on the following questions:

"Does it prohibit Justices of the Peace and Notary Public from making and acknowledging land deed and mortgages?

"Is the law in effect now? Does it prohibit Notary Public ex off. J. P. from collecting?

"Any information you may give me will be highly appreciated."

Section 6248 of the Code as amended does not prevent a Justice of the Peace or a Notary Public ex officio Justice of the Peace acknowledging deeds and mortgages. However, it prescribes a penalty for any person not regularly licensed to practice law, who charges a fee directly or indirectly for his services in writing deeds, mortgages, wills or other legal papers.

The Act amending this section of the Code was approved September 7, 1927, and is now in effect.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JJH:ML
October 1, 1927.

Hon. Charles E. McCall,
Chief Examiner of Public Accounts,
Capitol.

Dear Sir:

I am in receipt of your letter of September 23rd, which letter reads as follows:

"Will you please advise what is your opinion for the Solicitor's Fee to be charged on conviction of a case of, (1) Operating Motor Vehicle without license, (2) Fishing without license.

I have an inquiry from the Clerk of the Circuit Court, Lauderdale County, who wishes to be advised with reference to this matter. My opinion is that the occasion of inquiry is caused by the consideration of two paragraphs in Section 3738 of the Code of 1923, found on page 196, as follows:

"For each conviction of a violation of the revenue law, not otherwise provided for, $30.00.

"For each conviction of a misdemeanor, not otherwise provided for, $10.00.

"I will appreciate you advising me at your earliest opportunity."

The operation of motor vehicles without a license, I am of the opinion, comes under Section 5424 of the Code of Alabama, 1923. Section 3733 provides fees and commissions of solicitors.

We find no provision in this section which directly provides for solicitors' fees to be charged under Section 5424, therefore, we are forced to look to the general provisions of this section for relief. On page 196, 3rd Div., we find the following:

"For each conviction of the violation of the Revenue laws, not otherwise provided for, $30.00."

Therefore, there being no other provisions providing for solicitor's fees, under Section 5424 it is naturally referred to the provision quoted above and the fee is, in my opinion, $30.00.

There is not a license required for fishing in the streams of Alabama except as to non-residents, which is provided for in Section 4 of an act of the Legislature approved September 29, 1923, which section reads as follows:

"That for the purpose of carrying out the provision of this Act, there is hereby imposed fishing license fees as follows: Every non-resident of the State who fishes with hook and line, troll fly, spinner or substitute therefor, in any of the fresh waters of the State, shall pay $5.00 for a State fishing license, which license shall be issued under the same regulations and in like manner as hunting licenses are issued."

There is no special provisions made for a solicitor's fee under this section. Therefore, it would come under misdemeanors not otherwise provided for and the fee would be $10.00.

Hoping this answers your inquiry, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:ML
October 1, 1927.

Hon. S. M. Dunwoody, Commissioner,
Agriculture and Industries,
Montgomery, Alabama.

Dear Sir:

I have your request for an opinion on Article 34 of the Agricultural Code of 1927. You write as follows:

"Of the some 200 public warehouses in Alabama there are about 45 to 50 operating under what is known as the United States Warehouse Act. The question has arisen as to whether or not warehousemen bonded to operate under the United States Warehouse Act will be re-

quired by Article 34 of the Agricultural Code of 1927 to make a bond to the State of Alabama, in line with the provisions of the said Article.

"We enclose herewith a form of bond used under the United States Warehouse Act. We also enclose a copy of the old form of bond used by the State under Article 34 of the former Agricultural Code, Acts of 1923. The latter form of bond is of course being revised to meet the full requirements of the new Article 34 of the Agricultural Code, Acts, 1927.

"We are also enclosing a copy of an opinion by the former Attorney General with reference to the operation of Federal Warehouse Laws in Alabama, and to the application of the State laws to same.

"As all warehousemen, State and Federal, are now busily engaged in the storage of cotton and will be without bond at the close of business on September 30, I shall appreciate much your opinion on the above questions for the information of the warehousemen in writing their new bonds to be effective on and after October 1, 1927."

In answer to your first proposition the copy of the bond which you submit is in my opinion sufficient to meet the requirements of the Agricultural Code as outlined by Article 34 thereof.

In answering your second inquiry I wish to quote to you Section 244, Vol. 44, Part 1, United States Statutes at Large, and also Section 269:

"344. License to Warehousemen Generally.—The Secretary of Agriculture is authorized, upon application to him, to issue to any warehouseman a license for the conduct of a warehouse or warehouses in accordance with this chapter and such rules and regulations as may be made thereunder; provided, That each such warehouse be found suitable for the proper storage of the particular agricultural product or products for which a license is applied for, and that such warehouseman agree, as a condition to the granting of the license, to comply with and abide by all the terms of this chapter and the rules and regulations prescribed thereunder.

"269. State and Other Laws Not Affected; Enforcement of State Laws.—Nothing in this chapter shall be construed to conflict with, or to authorize any conflict with, or in any way to impair or limit the effect or operation of the laws of any State relating to warehouses, warehousemen, weighers, graders, inspectors, samplers, or classifiers; but the Secretary of Agriculture is authorized to cooperate with such officials as are charged with the enforcement of such State laws in such States and through such cooperation to secure the enforcement of the provisions of this chapter; nor shall this chapter be construed so as to limit the operation of any statute of the United States relating to warehouses or warehousemen, weighers, graders, inspectors, samplers, or classifiers in force February 23, 1923, in the District of Columbia or in any territory or other place under the exclusive jurisdiction of the United States."

You will see from Section 269, Agricultural Code, as adopted September, 1923, supra, that the States have a right to regulate warehouses.

In the case of Merchants Exchange of St. Louis vs. State of Missouri, at the relation of Barker, the United States Supreme Court speaking through Mr. Justice Brandeis says, "That the act does not violate the fourteenth amendment, as the State Court has pointed out, and the statute does not prohibit owners of grain from weighing it before it is sent to a public warehouse or after it is removed therefrom * * *. The regulation of weights and measures with a view to preventing frauds and facilitating commercial transactions is an exercise of the police power."

The contention in that case was made that all State regulations of the weighing of grain was superceded by the Act of Congress therein cited, related exclusively to the establishment by the Secretary of Agriculture of the standards of quality and conditions. The Court said that part B of Chapter 313, (Section 7, p. 484) like part C the United States Warehouse Act (which does contain some reference to weighing) (Section 29, p. 490) makes manifest the purpose of Congress not to supercede State Laws for the inspection and weighing of grain, but to cooperate with State officials charged with the enforcement of such State laws.

It is my opinion and I so advise that Article 34 of the Agricultural Code here under consideration does not conflict with the United States Warehouse Act as cited by you. See Sections of the United States Statutes at Large hereinbefore quoted. And I think that the State Board of Agriculture must require a license and bond of all warehouse dealers in this State.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
October 3, 1927.

Hon. R. H. Williams,
Judge of Probate,
Guntersville, Alabama.

Dear Sir:

This acknowledges receipt of your letter of September 13th. You write as follows:

> "Please refer to Sections 15 and 16 of the recently enacted revenue law and advise me whether in your opinion a vaudeville and picture show operated in connection with a district fair would be exempt from license. The Arab District Fair will be held beginning October 13th and they have booked a tent show to operate in connection with their exhibition or fair and this show is a combination picture show and vaudeville show. They are anxious to know whether they are going to be required to pay the license required under Section 16 or whether they will be exempt as under Section 15."

In reply will say that Section 15 of the recently enacted revenue law has no application to the case mentioned by you. A vaudeville show must

take out the license provided for vaudeville shows, and a moving picture show must take the license provided for moving picture shows. However, where such shows are operated by a State or county fair or agricultural association, they may be exempt under subdivision (h) of Section 2 of the Revenue Act, 1923, Acts, 1923, page 154.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

TEK-b
October 3, 1927.

Hon. W. H. Shaw,
Deputy Solicitor,
Tuscumbia, Alabama.

Dear Sir:

This is to acknowledge the receipt of yours of September 12th. You inquire whether or not a witness who was summoned in more than one case set for the same day and attended more than one case set for the same day is entitled to claim fees or per diem in all of the cases in which he attends. This question involves a construction of Section 3770 of the Code of 1923 which has been construed by a former opinion of this office and from which I quote:

> "The writer construes the above mentioned section to provide that a witness may claim fees in more than one case, providing he is detained or required to attend the other case after the one he elected to prove his attendance in has been disposed of. The same may be said and the same reasoning applied if he is subpoenaed in more than two cases. In each instance, however, after having proved attendance in one case, should he be required to attend others, he must make an election from the remaining cases to which he will prove his attendance.
>
> "If the case in which the witness elects to claim his fee is not disposed of prior to the other cases, then he would not be entitled to claim fees in the other cases, for the reason that he was not detained or required to attend the other cases. The same reasoning may be applied where there are more than two cases.
>
> "In the instance you speak of in your letter, the witness having failed to make an election before the two cases were disposed of, he would not be entitled to his per diem except in one case."
>
> Opinions of the Attorney General, Dec. 10, 1926 to Mr. M. R. Sowell, Monroeville, Alabama.

The rule would be the same as to the witness' right to claim his per diem in the circuit court.

You also inquire whether or not, a sheriff, when he captures or arrests a defendant with contraband or prohibited liquors or beverages and the defendant or defendants are acquitted, is entitled to mileage and expenses of trans-

portation in bringing in the liquor to be paid out of the fine and forfeiture fund of the county.

In answer to your second inquiry, I advise you that there is no law providing mileage for sheriffs arresting persons for violation of the prohibition law. You evidently have in mind mileage to be taxed as costs in cases where officers seize liquors and vessels under a search warrant. These fees and allowances are provided for in Section 4768 of the Code of 1923. Please take notice that any such reasonable sum charges for any expense incurred in transporting and providing storage for the liquors and vessels seized must be allowed, set out, and approved by the court, and under such circumstances may be charged in the bill of costs and if not collected from the defendant or defendants, shall be taxed and paid as other costs in criminal prosecutions in which the State fails, upon the court or judge making an order to that effect; that is, out of the fine and forfeiture fund of the county, as provided in Section 4768 above mentioned.

Hoping the foregoing expression furnishes you the desired information, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:ML
October 3, 1927.

Hon. Pat Byrne,
Sheriff, Mobile County,
Mobile, Alabama.

Dear Sir:

I have your letter of August 1st in which you request that I advise you whether or not a deputy sheriff is entitled to a fee of $50.00 if he arrests a juvenile, who is convicted for the manufacture of whiskey, and sent to a detention home.

The Code of 1923, Section 4626, provides that whenever any person is convicted in the circuit court of unlawfully distilling or manufacturing or making any of the prohibited liquors or beverages which are defined by the Code, there shall be charged in the bill of costs, the sum of $50.00, to be allowed the sheriff or other officer or person who furnished the evidence and brought about the conviction, etc.

The Code of 1923, Section 4659, provides that the sum of $50.00 shall be charged in the bill of costs in all cases where any person is convicted of violating the provisions of Article 3 of the prohibition act, etc.

The Code of 1923, Section 4788, provides the manner of payment in all cases provided by statute where a sum of money is allowed in the nature of a fee or reward and is made payable to any person who furnished the evidence that brought about the conviction, etc.

The Code of 1923, Section 4789, provides that if the defendant in such case is not sentenced to the penitentiary, but is sentenced to hard labor

for the county, said sum shall be payable out of the general funds of the county, etc.

You will observe from the above mentioned sections that said $50.00 fee is allowed for convictions in the circuit court and that it cannot be allowed for convictions in other than circuit courts for the reason that no other courts have jurisdiction of the offenses named.

You will also observe that no provision is made for the payment of said $50.00 fee unless the defendant is sentenced to the penitentiary or to hard labor for the county.

In view of the above it is my opinion that a deputy sheriff is not entitled to said sum of $50.00 if he arrests a juvenile who is convicted for the manufacture of whiskey and sent to a detention home.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:RF
October 3, 1927.

Hon. J. C. Weldon,
Tax Collector, Elmore County,
Wetumpka, Alabama.

Dear Sir:

I have your request for an opinion by this office of September 12th. You write as follows:

> "The 1923 Acts provide a graduated scale of commissions for the Tax Assessors and Collectors, and 2% on all special taxes, and in order that I shall make no mistake, would be glad you would advise me whether the following is correct:
>
> "General State Tax 25c Graduated Commission. Special Soldier (State) 10c 2% Commission, Special School (State) 30c 2% Commission. General County Tax 50c Graduated Commission, Spec. Road & Bridge 25c 2% Commission, Spec. County School 40c 2% Commission.
>
> "This is the scale given me by my predecessor in office, and will thank you for verification.
>
> "Also, the revenue bill by the present Legislature provides that we collect and assess all City taxes, and we notice that Section 1743 of the 1923 Code defines CITIES as municipalities of two thousand inhabitants or more, according to the last census, and will thank you to advise me whether we are to be governed by this section or to collect and assess all automobile taxes in all incorporated Towns."

The first three items as set out by you are substantially correct. The last three items I cannot advise you but would suggest that you obtain your information from the Office of the Court of County Commissioners because Section 215 of the Constitution is a limitation upon the counties. Therefore, I could not say whether or not Elmore County is levying the amount set out

by you. Also the graduating scale of commissions is correct. See Section 11 of the Revenue Code, 1923.

I answer to the second paragraph of your letter I will quote you Section 1743 of the Code of 1923.

> "Municipal corporations now existing, or hereafter organized under this chapter, containing two thousand or more inhabitants, shall be called cities. All incorporated municipalities containing more than one hundred and less than two thousand inhabitants, shall be called towns. The last census, whether Federal or taken as herein authorized, shall be taken in determining the population of a city or town. At the next election more than four months after the census shall have been taken and officially announced, if the municipality shows a population which authorizes a change in its government, under this chapter, the proper officers for such a city shall be elected and perform the duties herein prescribed."

Also sub-section F of Section 18 of the present Revenue Law adopted by the Legislature:

> "The Tax Assessors and Collectors of the several counties in this State, in addition to assessing and collecting the ad valorem taxes due the State and counties on motor vehicles, shall collect the ad valorem taxes on motor vehicles due all cities in this State. The Tax Collectors shall report and pay over the money collected for said cities at the same time and in the same manner as State and County taxes are reported and paid over by him. Said Assessors and Collectors shall each receive a commission of Two and One-half per cent of the amount of city taxes collected; and the tax collectors shall deduct said commission from the amount collected before paying into the City Treasury, and at the time pay over to the Tax Assessor commissions due him under this Act. Provided, that nothing in this Act shall change the rate of commission now charged by Tax Assessors and Tax Collectors in cities where the County Tax Assessor and County Tax Collector are required by local law to assess and collect all ad valorem taxes for such cities. Provided, that the Tax Assessors and Collectors of all counties which now have not less than seventy-five thousand inhabitants or over ninety thousand inhabitants, according to the last Federal census or any such census hereafter taken, shall each receive a commission of 5% of the amount of city taxes collected, which shall be in addition to any salary now received by them. The Judge of Probate shall not issue a license to operate a motor vehicle on the highways of this State until all ad valorem taxes due the said State, counties and cities are paid for the preceding year as shown by a receipt of the Tax Collector. That Schedule 7 of Section 361, Acts, 1919, page 282, be and the same is hereby repealed. That Section 19, of the Acts approved September 14, 1923, Acts, 1923, page 284, be and the same is hereby repealed."

I am, therefore, of the opinion that you will be governed by both Section 1743 of the Code, 1923, and by sub-Section F of Section 18 of the present Revenue Law in collecting and assessing automobiles for taxation in all incorporated towns in your county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
October 4, 1927.

Hon. S. M. Dunwoody, Commissioner,
Agriculture and Industries,
Montgomery, Alabama.

Dear Sir:

This will acknowledge receipt of the inquiry contained in your letter of the 3rd instant, relative to the validity of the resolution of the State Board of Agriculture, providing for the inspection of poultry flocks, eggs, baby chicks and hatcheries.

Upon examination of the resolution, I find that it is in the nature of an agreement between the Alabama State Board of Agriculture and the Alabama Extension Service. It provides for the joint employment of persons by these two agencies, and places the headquarters of the regulatory work with the Alabama Extension Service, and practically gives the Alabama Extension Service charge of the administration of the rules and regulations promulgated by the State Board of Agriculture.

Article 4 of the Agricultural Code, effective October 1, 1927, defines the recognized agricultural functions of the State, and assigns to the Department of Agriculture and Industries and the other agricultural agencies their proper field of operation for the purpose of preventing overlapping of work and requiring an entirely separate administration by each such agency. The teaching, research and extension work is recognized by this Article as the function of the Alabama Polytechnic Institute; the regulatory control and administrative work is assigned to the Department of Agriculture and Industries. The fixing and promulgation of official standards for grading and classifying agricultural products and the enforcement of such standards is clearly a regulatory and administrative function of the Department of Agriculture and Industries. Poultry is defined as an agricultural product (see Article 30 of the Agricultural Code).

Section 223 of the Agricultural Code of 1927 provides that no part of the funds available to the Department of Agriculture and Industries shall be expended for the salary or compensation, in whole or in part, of any member of the teaching staff, or other employes of the Alabama Polytechnic Institute, except that no more than one of the employes doing joint service for the college and the department could be retained. This section declares that the purpose of this provision is to guarantee an entire separation of the work of the Department of Agriculture and Industries from that of the college.

Section 487 of the Agricultural Code of 1927 provides that the agricultural fund shall be expended exclusively for the expenses of regulatory control and administrative work of the agricultural section of the Department of Agriculture and Industries, as that work is defined in Article 4 of the Code, and that the agricultural fund is not to be used or expended upon any work or activity which is recognized as the proper function of any agency other than that of the Department of Agriculture and Industries.

The provisions to which reference has just been made, considered in connection with the fact that in these instances under the former law in which there were joint employes by the various agencies have been definitely modified so as to prevent such joint employment, and considered in connection with the further fact that in several instances in which it was deemed permissible to permit joint employment, the law specifically authorized such joint employment, leads to the definite conclusion that it was the intent of the lawmakers to prevent further joint employment except where expressly authorized, to prevent an intermingling of the funds by such joint employment, to prevent the delegation of regulatory work to the teaching, research or extension work and vise versa, and to close the door to the opportunity to use the funds appropriated for one purpose to support the work of an entirely different agency.

It is, therefore, our opinion that the resolutions relating to the poultry work submitted to this department for determination as to their validity, are void.

The other resolution submitted to this office also contains an agreement for joint work between the Department of Agriculture and the Alabama Extension Service; and for the reasons hereinbefore assigned is violative of the terms of the Agricultural Code.

It is my opinion that the agreements entered into are contrary to the spirit and purpose of the statute and cannot be legally carried out.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

AAE:RF
October 4, 1927.

Hon. L. H. Brassell,
Member, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of October 3rd. You write as follows:

> "In placing in operation Sections 44 to 52, inclusive, of House Bill 359, approved July 22, 1927, there have been several questions raised in regard to the provisions of those sections, on which we desire to obtain your opinion. For the purpose of convenience, we are stating the questions in numerical order as follows:

"1. Under Section 51 of said House Bill 359, should the par value or principal amount on each security be considered separately in collecting the tax, or should the aggregate par value or principal amounts of all securities described in any one list be determined before calculating the tax? For example, if a list is filed describing ten different bonds or stocks or other securities, each of a par value of $50.00, should the tax be collected on each $100.00 of value or fraction thereof of each of such bonds or stocks, which would amount to ten times $.25; or should the tax be collected on each $100.00 of value or fraction thereof of the aggregate par value or principal amount of such securities, which would be five times $.25?

"2. If the owner of any securities described in Section 44 of House bill 359, held such securities on October 1st, 1926, and as of that date returned such securities for assessment for ad valorem tax to the county tax assessor for the tax year beginning October 1, 1926, and ending September 30, 1927, and if such owner on October 1, 1927, recorded his ownership of such securities and paid the license or privilege tax on same as provided in Section 51 of said House Bill 359, would such owner be required to pay the ad valorem tax which was assessed against such securities on October 1, 1926, and which became due on October 1, 1927; or would such owner be exempt from payment of such ad valorem tax by reason of the provisions of Subsection (d), Section 51 of said House Bill 359?

"3. If in answering the foregoing question you state that the owner of such securities should not pay ad valorem tax against such securities for the tax year 1927, how would the tax collector obtain credit for such assessment without collecting the tax thereon?"

In answer to your first inquiry will say that it is my opinion that the aggregate par value or principal amounts of all securities described in any one list should be determined before calculating the tax. A tax in my opinion is upon such aggregate value shown by the certificate filed.

In answer to your second inquiry will say that it is my opinion that all taxable securities duly assessed as of October 1, 1926, are not exempt from collection on said assessment by the recent revenue act. Such taxes must be collected.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Smith:AKB
October 5, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

I acknowledge receipt of your letter of October 3rd enclosing House Bill No. 862, approved September 6, 1927, in which you ask to be advised whether or not said bill is constitutional.

A careful reading of this bill discloses that it provides for an additional judge for the seventh judicial circuit of Alabama, and provides for the appointment of said judge, and the election in the future, and the compensation is fixed and made payable out of the State Treasury. This bill is general.

The jurisdiction of the circuit judges is co-extensive with the State. They have the same official authority and power in one county as in another.

Ex parte Nelson v. Kelly, 62 Ala. 376.
Board of Education of Escambia County v. Watts, 19 Ala. App. 7.

I am of the opinion and so advise you that House Bill No. 862 creating an additional circuit judge for the 7th Judicial Circuit is constitutional and a valid statute.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB-b
October 5, 1927.

Hon. M. U. Griffin,
Deputy Solicitor,
Huntsville, Alabama.

Dear Sir:

I have your request for an opinion by this office relative to payment of your salary from the 16th of August to the 16th of September. You write as follows:

"The question has been raised as to my salary during the period between the time of the creation of the new Madison County circuit and my appointment as Deputy Solicitor by Mr. James Pride, the new Circuit Solicitor.

"I was Deputy Solicitor of Madison County by appointment under Mr. John Sample, and continued to function as the County Solicitor after the new court was created, looking after preliminary hearings and doing the usual work of the Deputy Solicitor, and I did that on the theory that the County needed the services of the Solicitor and on the theory that I was Deputy Solicitor of Madison County by appointment of Mr. John Sample, and that the creation of a new circuit consisting

of Madison County alone did not affect me as Deputy Solicitor of Madison County until the Solicitor of the new circuit was appointed and qualified. I am now the Deputy Solicitor under Mr. James Pride, he having reappointed me immediately upon coming into the office.

"I have not looked up this matter from a technical standpoint because I have agreed with the Board of County Commissioners to abide by your decision. The question involved is whether or not I am entitled to my salary as Deputy Solicitor from the 16th of August to the 16th of September, or, between the time the court was created and the new Solicitor was appointed. As stated before, I did all the work incident to the office of Deputy Solicitor during the interim, and certainly from a practical standpoint, I should receive the usual salary. Mr. E. T. Terry, Chairman of the Board of County Commissioners, states that he will write you a letter asking for your opinion in this matter."

In answering you, I desire to call your attention to Section 5522 of the Code, which reads as follows:

"Deputy Solicitors appointed; Removal. The several circuit solicitors, except as otherwise provided by law, shall appoint a deputy solicitor in each county of his circuit, to represent the state in all cases in the county court and inferior courts, and all preliminary proceedings, applications for bail and habeas corpus proceedings in all courts, aid or act for the circuit solicitor before the grand jury and in all matters in the circuit court when requested to do so by the circuit solicitor, and perform all the duties of the circuit solicitor in his absence when so directed by the circuit solicitor, and such deputies may be removed by the circuit solicitor at pleasure."

It is evident that you are Deputy Solicitor within the meaning of the above quoted section of the Code.

As to the interval between the dates and your reappointment by Mr. Pride, if there were any interval—I am of the opinion that you were at least a **de facto** officer, if not **de jure,** and entitled to collect your compensation for that interval.

9 Am. and Eng. Enc. of Law. (2nd Ed.) p. 382.

I assume, however, that Mr. Pride's appointment dates from the time the new circuit act went into effect.

See Biennial Report of Attorney General, 1918-1920, page 331.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:RF
October 6, 1927.

Hon. David Adams,
County Treasurer of School Funds, Wilcox County,
Pine Apple, Alabama.

Dear Sir:

I have your request for an opinion by this office wherein you write as follows:

"I wish to submit the following statement of facts for an opinion from your office:

"Mr. W. J. Jones has been serving as County Superintendent of Education of Wilcox County for some time. He was re-elected to this position by the County Board of Education for a period of five years from July 1, 1926, at a salary of $2,000 per annum and expenses.

"On September 30, 1927, Mr. Jones tendered his resignation as Superintendent of Education to the County Board of Education and this resignation was duly accepted. On the same date, however, the Board of Education elected Mr. Jones as Superintendent of Education for a four year term beginning October 1, 1927, at a salary of $2,700 per annum and expenses. All of these facts are shown by the minutes of the Board of Education.

"Please advise me if I as County Treasurer of School Funds of Wilcox County can legally pay the monthly salary of Mr. W. J. Jones as fixed by the County Board of Education at the meeting of September 30th."

In my opinion a County Superintendent of Education elected by the County Board of Education holds a civil office of profit, under this State. Under the law his term cannot be less than two nor more than five years and his salary or compensation cannot be less than $1,500.00 per annum. He can be removed from office only by impeachment proceedings. (See Section 175 of the Constitution; also decision of the Supreme Court in Petree vs. McMurray.) 210 Ala. 639.

I advise you, that you cannot pay this increase in salary because the Board of Education is seeking to do an act indirectly that it cannot do directly. His resigning and being reappointed is simply a subterfuge to increase his salary during his term of office.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
October 6, 1927.

Hon. S. P. Dunn,
Judge of Probate,
Evergreen, Alabama.

I have your letter of September 28, 1927, in which you state that the Board of Registrars of your county was appointed on November 22, 1923 to hold office for four years. You further state that you understand that the new law changed the time of registration. You request that I advise you whether or not the present members of the board of registration can advertise and sit for thirty days for the purpose of registration, under their present appointments.

The Code of 1923, Section 375, contains the provision that the board of registrars in each county shall visit each precinct at least once and oftener if necessary, between January 1st, and April 1st, 1923, and each two years thereafter, to make a complete registration of all persons entitled to register, etc.

The above Section 375 was amended by S. B. 179 by Fite, such amendment having been approved August 20, 1927. The amendment contains the provision that the board of registrars in each county shall visit each precinct at least once and oftener if necessary between October 1st and December 31st, 1927, and each two years thereafter, to make a complete registration of all persons entitled to register, etc.

The Code of 1923, Section 371, contains the provision that registrars may be removed at the will of the appointing board, but that if they are not removed they may hold office for four years from the time of their appointment and until their successors are appointed.

This office rendered an opinion to Hon. Hugh C. McCafferty on June 6, 1927, in which it was held that a registrar could hold office until he was removed or until his successor is appointed.

In view of the above it is my opinion that your present board of registration may advertise and sit for the purpose of registering voters for a period not exceeding thirty days between October 1st and December 31st, 1927, provided they are not removed or their successors appointed until after December 31, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:RF
October 6, 1927.

Hon. M. V. Henry,
Treasurer, Jefferson County,
Birmingham, Alabama.

Dear Sir:

I have your request for an opinion by this office on House Bill 474. You write as follows:

"As County Treasurer of Jefferson County, Alabama, I respectfully request your opinion in writing as to the following question of law connected with my duties as such County Treasurer:

"I am in doubt as to the constitutionality of Act No. 576 entitled an Act 'To create an additional judgship for the Tenth Judicial Circuit of Alabama, to provide for the appointment and for the election of an incumbent thereof and to prescribe the jurisdiction, power, authority, qualifications, duties and compensation of such incumbent.'

"I am not advised as to whether notice of intention to apply for such enactment was given, as required by the Constitution, if in point of fact it is a local measure. In the next place, I am in doubt as to whether it is a general or a local law under the Constitution.

"Question has arisen on the demand made by the acting Judge for the payment of the salary provided for by said act, or at least that part of it which is payable out of the County Treasury of this County.

"I hereby certify to the facts above set forth and that the advice sought is necessary to the present performance of my duties as such County Treasurer."

A careful reading of this bill discloses that it provides for an additional judge for the tenth judicial circuit of Alabama, and provides for the appointment of said judge, and the election in the future, and the compensation is fixed and made payable out of the State Treasury. This bill is a general bill.

The jurisdiction of the circuit judges is co-extensive with the State. They have the same official authority and power in one county as in another.

Ex parte Nelson v. Kelley, 62 Ala. 376.
Board of Education of Escambia County v. Watts, 19 Ala. App. 7.

I am of the opinion that there are no constitutional objections to this bill.

As to the payment of that part of the salary from the County Treasury, I desire to call your attention to the following sections of the Code:

"6703. Salaries paid by counties in addition to those paid by state.—In circuits, now or hereafter composed of only one county and having two or more judges, and in which salaries are paid to such judges by the counties constituting such circuits, in addition to the salaries paid by the State, such salaries shall continue to be paid to each of the judges in such circuits by the respective counties composing said circuits, in the manner now provided, which salaries so paid by the counties shall be in addition to the salary provided to be paid by the State."

"6705. Part of salary paid out of County Treasury.—Whenever the salary of a circuit judge is partly paid by a county in which such judge holds court, said salary so paid by such county shall be paid out

of the treasury of such county upon the warrants of the judge or judges of such courts, in monthly installments."

It is my opinion and I so advise you that you can safely pay the salary of the judge appointed pursuant to the act under consideration.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:RF
October 6, 1927.

Hon. J. T. Beasley,
Mayor,
Red Bay, Alabama.

Dear Sir:

I have your request for an opinion by this office relative to searching automobiles. You write as follows:

"Please send by return mail ruling on searching cars for whiskey."

In the case of Tranum vs. Stringer, 113, So. 541, our Supreme Court says:

"Our prohibition laws, with enforcement machinery, and many provisions designed to prevent evasion, are in entire harmony with the spirit of the National Prohibition Laws. Not only 'Prohibited liquors' but 'vehicles of transportation' used in conveying same are declared 'contraband.' Both are subject to seizure, the liquors for destruction and the vehicle for forfeiture to the state. Seizure shall be made by any enforcement officer 'who becomes cognizant of the facts, or who finds liquor in such conveyance or vehicle being illegally transported.' Code, 4778.

"This alternative mode of expression indicates that the power and duty of seizure is not limited to cases where the officer finds the liquor being transported with the aid of the five senses, but where he becomes cognizant of the facts'; acquires knowledge from any source which measures up to the requirements of probable cause; such information as leads a careful, prudent man, regardful of the rights of the citizen, to a reasonable belief.

"Mere belief, however honest, is not enough. The rash and the unduly suspicious cannot justify upon belief which may to him seem sufficient. There must come to him facts from sources which a prudent man deems reliable, and of sufficient probative force to lead such man to a reasonable belief; there must be probable cause to believe.

"In dealing with the individual case the fact that the automobile upon search is found to be transporting contraband liquors is of decided weight in passing upon the reasonableness of the search without warrant. That the car is in fact contraband tends to verify the information on which the search was made. The officer who acts upon in-

formation which proves unreliable, resulting in the stoppage and search of the car of an innocent citizen, carries the full burden of showing probable cause."

The foregoing is as clear as can be written, and states the law of this State upon the subject inquired about.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:RF
October 7, 1927.

Hon. J. H. Allen,
Sheriff of Clay County,
Ashland, Alabama.

Dear Sir:

I have your letter of September 12th in which you request that I advise you whether or not a sheriff is entitled to $3.00 per diem for services rendered in handling persons of unsound mind especially in transferring them from your county to the hospital.

The Code of 1923, Section 1445, provides that all necessary expenses incurred in conveying an indigent patient to the insane hospital shall be paid out of the county treasury on order from the county commissioners.

The Code of 1923, Section 4580, provides that the cost of removing an insane prisoner to and from the hospital must be defrayed by the state as in case of removal of prisoners from one county to another.

The Code of 1923, Section 3741, provides that the sheriff shall be paid $3.00 per day for himself or his deputy, acting in his stead, and shall be paid $2.00 for each guard for each day they are respectively engaged in removing a prisoner from the jail in one county to the jail in another county.

You will observe that the provisions of the Code of 1923, Section 4580, apply only to those cases in which the insane person is charged with the commission of crime.

The Code of 1923, Section 3734, provides that the law of costs must be deemed and held a penal law and that no fee must be taken but in cases expressly provided by law.

The principle which is stated in the above Section 3734 was upheld by our Supreme Court in the following cases:

Torbert v. Hale County, 131 Ala. Reports 143.
Espalla v. Mobile County, 200 Ala. Reports 410.
McElderry v. Abercrombie, 213 Ala. Reports 289.

There is no provision of law which authorizes the payment of any specific amount to the sheriff for removing a person of unsound mind from a county to the insane hospital unless such insane person is charged with crime, in which case the sheriff is entitled to $3.00 per day plus $2.00 per day for each guard for each day they are engaged in such removal.

There is no provision of law for the payment of expenses of removing indigent persons to hospitals where such persons are not charged with crime, other than the provisions of the Code of 1923, Section 1445, but said section does not authorize the payment of any specific amount to the sheriff for his services for removals. It is my opinion that the sheriff is entitled to be paid all necessary expenses incurred in conveying the indigent persons to the hospital when he is deputized by the Probate Judge.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
October 7, 1927.

Dr. G. C. Mallette,
County Health Officer,
Bay Minette, Alabama.

Dear Sir:

In answer to your inquiry of September 10th, will say that the following persons are exempt from road duty:

1st. All women;

2nd. All men under the age of 18 and over the age of 45;

3rd. All persons who have lost an arm or leg.

4th. All persons who, by nature or disease are rendered incapable of hard labor, who shall procure a certificate of such incapacity from the County Board of Health.

In counties where there is no County Board of Health, the certificate of such incapacity from two reputable practicing physicians shall be sufficient.

If a person lives in a community where road duty is required, and is not a woman, or a man under eighteen or over forty-five years of age, or a man who has lost an arm or leg, then, to be exempt from road duty, he must have a certificate from the County Board of Health, if there is no such board, a certificate from two reputable, practicing physicians stating, in effect, that such person—naming him—by nature, or by disease (whichever may be the case), is rendered incapable of hard labor.

If a person is otherwise subject to road duty and has no such certificate, then he should be proceeded against under Sections 5456 and 5457 of the Code of 1923.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans.
October 8, 1927.

Hon. W. L. Pratt,
Judge of Probate,
Centreville, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 6th. In reply will say that it is my opinion that a doctor who does not practice in any incorporated town or city in this State is not required to take out a license. But if he practices at all in any incorporated town or city, he must take out a license although he may live outside of all municipal corporate limits.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans.
October 8th, 1927.

Hon. J. P. Stiles,
Judge of Probate of Jefferson County,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 6th. In reply will say that it is my opinion that Section 9 of the Revenue Act of 1927 repeals by implication Schedule 43 of Section 361 of the Revenue Act of 1919.

I am of the opinion and so advise that no one is exempt from the payment of license required by said Section 9 except such as are mentioned in said Section 9, viz.: Doctors who have practiced their profession for a period of time less than two years.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
October 12, 1927.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

Dear Sir:

Your letter of October 7th to hand. You write as follows:

"If an automobile dealer pays his State and County license in this, Marion County, has he the right to establish what we call an associate dealer in another county, other than this county? If so, what will the license be for this associate dealer?"

In reply will say that Section 18½ of the revenue act, 1927, reads as follows:

> Section 18½. Agents or Dealers in Automobiles. Upon each and every agent and dealer in, and upon every person soliciting orders for the sale or purchase of automobiles, motor cars or other self-propelling vehicles, except motorcycles, and except any person regularly employed by a said agent of or dealer in, which said agent of or dealer in has paid the privilege tax or license herein provided for, the following privilege tax or license shall be collected, to-wit: In each county having a population of twenty thousand people or less, twenty-five dollars; in each county having a population of more than twenty thousand and less than forty thousand inhabitants, fifty dollars; in each county having a population of forty thousand and less than sixty thousand inhabitants, seventy-five dollars; in each county having a population of sixty thousand and less than one hundred thousand inhabitants, one hundred dollars; in each county having a population of one hundred thousand or more inhabitants, one hundred and twenty-five dollars. Schedule 10 of Section 361 of an act to provide for the general revenue of Alabama approved Sept. 15, 1919, is hereby repealed."

My construction of this section is that a license must be taken out in every county where any of the acts provided for in said section are done. Where a license has been taken out by an agent or dealer in any county, his employes operating in such county do not have to take out a license for doing what the employer is licensed to do. The amount of the license in each county is based upon population.

If the foregoing is not the proper construction of said Section 18½, and a person who takes out a license in one county may operate, under such license, in every county in the State, then every dealer in the State can take out license in the county having the smallest population, and, under such license, do business everywhere in the State. The license is for the privilege of doing business, and a person may take out such license, as matter of right under the law, in any county in the State, even though he may not live in the county where he takes out the license, and though he may never exercise, in such county, the privilege granted by the license.

If such license, when so taken out, entitles the licensee to do business everywhere in the State, of course, everyone with any business sense or ability, will take out the license in the county having the smallest population. I am unable to ascribe to the Legislature such an intention; especially, since such intention must be inferred contrary to the letter of the law.

Yours very truly,

CHARLIE C. McCALL,

Attorney General.

Written by Judge Evans:ML
October 13, 1927.

Hon. W. H. Brogden,
Judge of Probate,
Andalusia, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 11th, with copy of deed from J. Ralph Riley and wife to W. H. Dykes. It appears from the face of the deed that the price of the land conveyed was nine thousand eight hundred dollars in addition to assumption of the payment of the mortgage. In other words the deed recites the payment of $9,800.00 cash and the assumption of the mortgage as the consideration for the purchase of the land. The value of the land, therefore, was $9,800.00 plus the present value of the mortgage debt. The mortgage debt you say is $3,200.00. If $3,200.00 represents the principal sum loaned, then the $9,800.00 and the $3,200.00 should be added to ascertain the value of the land. This makes the value of the land conveyed $12,000.00 and, since no tax was paid for recording the mortgage, nothing should be deducted. The filing tax for the deed should be six dollars.

Yours truly,
CHARLIE C. McCALL,
Attorney General,

AAE-b
October 14, 1927.

Hon. George H. Thigpen,
Superintendent of Insurance,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of October 12th. In reply will say that, in my opinion, Sections 8420 and 6965 apply to domestic corporations only, and that I know no provision of law which would prevent the Liberty Life Insurance Company of Topeka, Kansas, from qualifying to do business in this State on account of the similarity of its name to that of the Liberty Life Insurance Society of Birmingham, Alabama.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
October 14, 1927.

Hon. M. V. Henry,
County Treasurer of Jefferson County,
Birmingham, Alabama.

Dear Sir:

You inquire as to the constitutionality of House Bill No. 783, which Act establishes an inferior Court within certain territorial limits in Jefferson County. This is a court of civil jurisdiction only.

The Legislative Journals show notice of the intention to apply for the passage of this Act to have been published and proof made thereof.

It appears that all the requirements of Section 106 of the Constitution were complied with. The Act as published was passed by the House without material variance.

Section 139 of the Constitution provides that the Legislature may create such Inferior courts as it sees proper.

The Supreme Court of this State has numerous times upheld Acts of the Legislature establishing inferior courts.

Murphy v. State, 58 Sou. 671.
Lee v. State, 143 Ala. 93.

I find no Constitutional objection to the Act creating the Birmingham Court of Common Pleas.

Yours very truly,
CHARLIE C. McCALL,
Attorney General,

Written by Mr. Koonce:AKB
October 14, 1927.

Hon. Frank Ball, Judge,
Municipal Court,
Bessemer, Alabama.

Dear Sir:

I have your letter stating that you understand that the Treasurer of Jefferson County has requested an opinion on the constitutionality of Bill No. 140, S. B. No. 46, by Fite, which bill was approved July 7, 1927. I find that the Treasurer of Jefferson County has not requested the opinion which you mention in your letter so I am rendering the opinion to you.

The Local Acts of 1915, page 231, contain an Act which creates the Municipal Court of Birmingham, and the provisions of the Act creating said court are similar to the provisions of the above Act approved July 7, 1927, with but few exceptions. Our Supreme Court passed upon the validity of the Act creating the Municipal Court of Birmingham in the case of McGehee v. State, ex rel Tate, Solicitor, 74 Sou. Rep. 374.

I have examined the above Act approved July 7, 1927, and it is my opinion that it does not violate any provisions of the Constitution. The House and Senate Journals show that publication was made as required by the Constitution of 1901, Section 106.

In view of the above it is my opinion that Senate Bill 46, approved July 7, 1926, is a valid enactment and that all its provisions are to be given full force and effect.

Yours very truly,
CHARLIE C. McCALL,
Attorney General,

MTK:ML
October 18, 1927.

Hon. S. P. Rainer,
Judge of Probate, Bullock County,
Union Springs, Alabama.

Dear Sir:

I have your letter of recent date stating that a local law was passed and approved about August 18, 1927, fixing the salary for the deputy solicitor of Bullock County at $75.00 per month. You further state that after the passage of this local act, a general act was passed fixing the compensation of deputy solicitors at $100.00 per month.

I am enclosing a copy of Bill No. 468, S. 221, Williams, which act provides for a salary of $100.00 per month for deputy solicitors. You will observe, however, that the enclosed Act contains the provision that it shall not be construed to repeal any local or special law fixing the salaries of deputy solicitors in any county in this state.

In view of the above, it is my opinion that the deputy solicitor of your county is entitled to the salary provided for in the local bill. I would have advised you before now about this matter but was forced to wait until the enclosed bill had been printed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General,

Written by Judge Evans: ML.
October 18, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 10th. You write as follows:

> "The deed tax law in the new revenue code passed by the recent Legislature provides that instead of as heretofore paying a deed tax on the entire value of the property deeded when filed for record, tax should be paid only on the value of the property deeded less any mortgage against any property on which the mortgage tax has been paid. Please advise us how we shall officially determine whether or not a mortgage has been given against such property and mortgage tax paid. Must the body of the deed recite the fact of the mortgage and the amount of mortgage tax paid or shall we be compelled to refer to the record for same? Please give us an immediate hearing."

In reply will say that in administering the deed filing tax law the Judge of Probate should presume that there is no mortgage on the property which has been filed for record and the filing tax paid and should put the burden upon the person offering such deed for record to furnish the proof of the

record of such mortgage and the fact that such mortgage has not been paid. It would be well to keep in mind also that mortgages to the Federal Land Bank, which pay no filing tax for recording, are not to be deducted.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
October 18, 1927.

Hon. J. F. Posey,
Judge of Probate,
Prattville, Alabama.

Dear Sir:

I have your letter of September 23rd, in which you request that I advise you whether or not Section 21½ of the Revenue Bill approved July 22, 1927, applies to deeds made by different parties to the county for a right-of-way for a road and whether or not such section applies to a deed which is made from a county to the state, for a right-of-way for a road.

This office rendered an opinion to Hon. H. K. Martin on May 10, 1926, which opinion is found in Vol. 1 of the opinions of 1926, page 221. This opinion contains the following:

> "Deeds to the State or County or City do not require a filing tax, since there is never any purpose implied to tax the State or any of its governmental instrumentalities."

This office rendered an opinion to Hon. L. F. Sessions, Judge of Probate, on September 17, 1926, which opinion is found in Vol. 1 of the opinions of 1926, page 408, in which it was held that it is never presumed that the government intents to tax itself or any of its instrumentalities unless the law so specifically provides.

In view of the above, it is my opinion that Section 21½ of the Revenue Bill approved July 22, 1927, which is H. B. 359, does not require the payment of a filing tax on deeds made by different parties to the County for a right-of-way for a road and that such act does not require the payment of a filing tax on deeds made by the county to the State for rights of way for roads.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
October 18, 1927.

Hon. R. E. Tidwell,
State Superintendent of Education,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of October 7th, inclosing letter of Mr. J. B. Barrett, Clerk of the Town of Boaz.

In reply will say that after a careful examination of the School Code, 1927, and of the act adopting said Code, I am of the opinion that the local act giving control of the schools in said town of Boaz to the town Board of Education was repealed by the adoption and passage by the Legislature of the said School Code. I find nothing in the School Code which, in my opinion, shows a legislative intent of preserving local laws where in conflict with the provisions of said Code.

The act adopting the School Code, on the other hand, has the following provision:

> "That the work prepared by Harwell G. Davis, as Code Commissioner, under and in accordance with the provisions of the Act approved August 11, 1927, entitled 'An Act to provide for the revision, codification, digesting and promulgation of the public statutes of Alabama relating to education,' as shown by the manuscript filed by the said Harwell G. Davis with the Governor on the 13th day of August, 1927, which said work has been recommended for adoption by the Joint Committee of the two houses of the Legislature authorized and appointed to read and report on the same, is adopted and enacted as The Educational Code of Alabama, and shall regulate completely so far as a statute can the subjects to which it relates. Said Code shall go into force and be operative on the thirtieth day after the date of the Governor's proclamation announcing its publication."

In my opinion, the foregoing shows clearly the legislative intent to repeal, by implication, all laws in conflict with said Code. It is very clear that "a statute can" regulate all of the matters in said Code and, since a statute can so regulate, the School Code does so regulate all matters covered by it.

This language used in adopting the School Code is very similar to the language used heretofore in adopting a general Code of Laws for the State; but, in those codes, will be found provisions preserving local laws from repeal by the adoption of the Code. Section 10, Code 1907; Section 11, Code 1923.

The section of the general Code preserving local laws from repeal by the act adopting the Code forms part of the Code adopted. The fact that such a section was omitted from the School Code while the act adopting the School Code was, in effect, the same as the act adopting the general Code, is, in my opinion, further persuasive that the Legislature did not intend preserving the local school laws where in conflict with the school Code.

I am herewith returning letter of Mr. Barrett.

Yours truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:RF
October 18, 1927.

Hon. John L. Scogin,
Sheriff, Montgomery County,
Montgomery, Alabama.

Dear Sir:

I have your request for an opinion regarding the confinement of prisoners transferred from another county. You write as follows:

"Will you please advise me, whether or not I have the legal right to take into my custody and confine in my jail, a prisoner transferred from another county on account of the jail of such county being declared unsafe by the State Prison Inspector, without a commitment from proper authorities or other lawful papers. Also advise by what authority of law, shall I release such prisoner from my jail.

"Further, in case where prisoner has been transferred to my jail from another county, for safekeeping, in that event by what legal authority shall I release such prisoner from my jail. In such case, would I have the legal right to release such prisoner from my jail, where the sheriff of such county mailed me an appearance bond, approved by him?"

Section 4814 of the Code is as follows:

"4814. Same; commitment to nearest sufficient jail. In all criminal cases, either before or after conviction, and in cases of contempt, if it is shown to the court, judge, or committing magistrate that the jail of the proper county is insecure or insufficient for the safekeeping of the prisoner, or that there is no jail in the county, the commitment must be to the nearest sufficient jail; and the reason of such change must be entered on the minutes of the court, or stated in the warrant, or indorsed thereon, and signed by the magistrate; and the jailer of the county to which the commitment is made must receive and confine the prisoner on such commitment, or a certified copy of such order."

You will see by this section, that the court or magistrate issuing a commitment for the confinement of a prisoner in the jail of your county must state the reason for the transfer of such prisoner, or the same may be indorsed on the warrant. It is your duty to receive such prisoners.

It is your duty to receive prisoners ordered removed by the State Prison Inspector under Section 4861 of the Code.

Section 4862 of the Code provides a penalty for any sheriff who refuses without good excuse to obey the order of the State Prison Inspector.

It is my opinion, and I so advise you, that when a prisoner has been transferred to your jail, you should, before releasing him, take a receipt from the sheriff of the county from which the prisoner was committed. And if the sheriff of such county should mail you an appearance bond, he should also mail a receipt for such prisoner ordering his release. However, it is a matter of fact, for you to ascertain whether or not such receipt or release signed by the sheriff is properly executed and genuine.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:ML
October 18, 1927.

Mr. A. G. Richardson,
District Commissioner, Washington County,
Chatom, Alabama.

Dear Sir:

I have your request for an opinion by this office regarding the use of the fund from the gasoline tax. You write as follows:

"Please advise if a public road granted at a regular term of Commissioners Court, after being advertised 30 days as required by law, viewed by regularly appointed viewers, reported to the court by them, and right-of-way secured is a public road in the meaning of the law on which gasoline tax can be expended to put it in passable condition."

Section 83 of the Revenue Act of 1923, Acts 1923, page 197, provides that "All funds derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said counties."

See opinion of Attorney General, April 27, 1927.

It is my opinion, and I so advise you, that under the quoted section of the Act supra the funds derived from the gasoline tax may be used only for the purposes expressly provided for by the terms of said Act. This money cannot be used for constructing new roads.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
October 18, 1927.

Mr. Cecil C. May,
Clerk of the Circuit Court of Butler County,
Greenville, Alabama.

Dear Sir:

I acknowledge receipt of your letter of October 17. In this letter you desire to know the correct solicitor's fees to be collected in each of the following cases:

"(a) Operating a motor vehicle upon a public highway without having a license tag displayed as required by law."

"(b) Operating a motor vehicle upon a public highway while drunk or intoxicated, contrary to law."

"(c) Unlawfully operating a motor vehicle upon the public highway of the State of Alabama recklessly, having regard to the width, traffic and use of the highway, or so as to endanger property or the life or limb of a person."

In answer to your inquiry I advise you that in case of operating a motor vehicle without a license, the solicitor's fee would be $30.00.

(See opinion of Attorney General to Charles E. McCall, Chief Examiner of Accounts, under date of October 1, 1927.)

The Solicitor's fees in the other two classifications named by you should be $10.00, as this comes under Section 3738, Code of 1923, "for each conviction of misdemeanor not otherwise provided for."

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
October 18, 1927.

Hon. W. M. Vaughan,
Judge of Probate of Dallas County,
Selma, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 14th. In reply will say that it is my opinion that the fifteen per cent tax on sales of cigars, cigarettes, cheroots, or any substitute therefor applies only to retail dealers; but the law permits the wholesale dealer to pay the tax for the retail dealer and thereby relieve the retail dealer of the necessity of going through the trouble of making reports and paying the tax. The tax is to be paid on but one sale of the article. The tax is based on the wholesale selling price and therefore it makes the payment of the tax very much simpler when the wholesale dealer pays it for the retail dealer or assumes the payment of the tax. When the retail dealer pays the tax he must pay monthly on or before the 10th day of each month for the taxes due for selling or otherwise disposing of said articles during the preceding month. Whereas, the wholesale dealer if he pays the tax for the retail dealer to whom he sells such articles, is required to make report and payment quarterly. When the wholesale merchant pays the tax for the retail merchant to whom he sells, or assumes the payment of the tax, then such wholesale merchant must make an entry or statement on the invoice or bill for such articles that the tax provided has been paid or that such tax is assumed by the wholesale dealer. Where the wholesale dealer does not pay the tax and does not assume the payment of the tax, then he should make no endorsement on the invoice. The wholesale dealer is allowed to pay the tax for the retail dealer simply because it is much easier and simpler for the tax to be paid in that way. Undoubtedly the tax was placed upon the retail dealer for the reason that no tax could be placed upon a wholesale dealer in another state selling his goods in this State in interstate commerce.

As said before, it was the intention of the law to collect only one sales tax on any given article, and as a protection to the wholesale merchants in this State against competition of wholesale merchants in other States, who would not have to pay the tax, the tax was placed upon the retail merchants, thereby simplifying the payment of the tax as far as possible.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
October 19, 1927.

State Tax Commission,
Capitol.
Attention Hon. L. H. Brassell.

Dear Sir:

This acknowledges receipt of your letter of October 15th. You write as follows:

> "The question has been raised as to what extent the exemption accorded 'deeds or instruments executed for a nominal consideration for the purpose of perfecting the title to real estate should be applied. It is not entirely clear what limitations should be placed on this exemption or what construction should be placed on the words, 'for the purpose of perfecting the title to real estate.' We would ask that you give your opinion construing the exemption accorded such instruments."

In reply will say that the expression "deeds or instruments executed for nominal consideration for the purpose of perfecting the title to real estate," means, in my opinion, such deeds or instruments as are executed by a person who does not claim to own any actual or beneficial interest in the property purported to be conveyed by him, and who executes such deed or instrument to perfect the record title merely of the grantee. Where a deed conveys an actual, recognized interest in the proprty conveyed, such deed must be taxed for filing for record, although there is recited only a nominal consideration. For instance, a deed of gift might recite a nominal consideration only, but it is executed to convey the title to the property and not merely to perfect the title.

While the language of the statute might admit of a broader construction than that given above, I am of the opinion that the construction given above conforms to the legislative intent in the premises.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:ML
October 19, 1927.

Dr. S. W. Welch,
State Health Officer,
Montgomery, Alabama.

My dear Sir:

I acknowledge receipt of your letter of September 28th.

You desire an opinion from this office as to whether or not the Health Department of a County has authority to segregate typhoid carriers who are domiciled in construction camps.

I advise you that under Sections 1051, 1058, 1135, 1136, 1141, 1142, 1143 and 1144 your department has plenary authority to remove or segregate ty-

phoid carriers who are within the State of Alabama. It is not material that such a carrier may have a special contract with a construction company, whereby said carrier is domiciled within the construction camp of said company.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

October 20, 1927.

Hon. M. V. Henry,
County Treasurer of Jefferson County,
Birmingham, Alabama.

Dear Sir:

You inquire as to the validity of House Bill 1119, which increases the salary of the Probate Judge of Jefferson County.

The Legislative Journals show notice of the intention to apply for the passage of this Act to have been published and proof thereof made as required by and in compliance with Section 106 of the Constitution of 1901.

It remains then to determine whether or not this action on the part of the Legislature conflicts with any constitutional provision.

The Legislature could not generally increase or diminish the salaries of county officers during their term of office. This action would be prohibited by Section 281 of the Constitution of 1901. However, in 1912, an amendment to the Constitution of 1901 was adopted. This amendment has the effect of removing any action, of such character, by the Legislature from within the influence of Section 281, that is, in so far as such action affects officers of Jefferson County.

Waldrop v. Henry, 92 So. 425.
Sloss-Sheffield v. Brooks, 96 So. 81.
2nd Amendment to the Constitution of 1901.
Birmingham Elec. Co. v. Harry, 111 So. 41.

Of course, if it is attempted by the Legislature to pass such an Act, such action must be had with due regard for all provisions of the Constitution. If this be done by local act, the provisions of the Constitution regulating local legislation must be strictly complied with.

In the instant case the salary of the Probate Judge was changed by local act. The Journals show notice and proof. The second amendment to the Constitution of 1901, removes the Act from the influence of other sections of the Constitution with which it might conflict.

I find no constitutional objection to the Act as passed.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
October 20, 1927.

Hon. W. A. Leland, Jr.,
Clerk Circuit Court,
Tuscaloosa, Ala.

Dear Sir:

I have your request for a construction of items of costs under House Bill No. 707. You write as follows:

"In re: H-707. Ward of Tuscaloosa.

"Please refer to the above bill establishing an Inferior Court for Tuscaloosa County, passed a few weeks ago and furnish me an itemized statement of all fees that the Clerk of the Court shall collect. I desire this that I may make no mistake in this matter."

Section 4 of House Bill 707 provides that you ought to collect in civil cases the same fees and costs for services of the clerk, sheriff, and witnesses as are **now** collected in the courts of Justices of the Peace. You are required to collect a trial tax of $1.00 on all civil cases filed in said court.

By section 4 of the acts, supra, you are to collect the same costs, fines and fees as are now assessed, charged and collected in Justice courts, **and of which Justice of the Peace have jurisdiction.** See Code 1923, Section 3753. In all other criminal cases the same fees for the services of the solicitor, clerk, sheriff and witnesses as is provided by law for such services and offenses in the county court of Tuscaloosa County. See Section 3758, Code 1923. In all criminal cases you are to collect a trial tax of $3.00.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:LM
October 20, 1927.

Hon. M. V. Henry,
County Treasurer of Jefferson County,
Birmingham, Ala.

Dear Sir:

Your inquiry as to the validity of House Bill 1076 providing that the Board of Revenue may draw its warrant in favor of the Tax Collectors and Tax Assessors for ex-officio services performed.

The Act was passed as a general law. A certain basis of classification was made. The law applies to counties of 200,000 or more population and has a prospective application to counties which may have the population therein specified.

The Supreme Court has decided that under such a population classification the law may have general application and may be passed as a general law without complying with the requirements of Section 106 of the Constitution as to notice and proof.

Birmingham Electric Co. v. Harry, 111 So. 41.

No other constitutional provisions restrict the application of the Act, about which you inquire, to any portion of the State less than the whole. On the other hand, Section 68 of the Constitution of 1901 provides that the Legislature may authorize the Board of Revenue to draw warrants in favor of County officers for ex-officio services.

Section 68, Constitution of 1901.

This office is not apprised of the nature of the duties imposed upon the Tax Collectors and Tax Assessors which are termed ex-officio duties. If the duties required to be performed by the officer are not such duties as have been annexed to the office by law, for which the law has prescribed a definite fee, and if such duties were not germane to the office at the time the compensation was fixed, then the rule seems to be that such services should be classed as ex-officio.

Under Section 68, as hereinbefore stated, the Legislature may authorize the Boards of Revenue to compensate the officers for such duties.

Macon County v. Abercrombie, 184 Ala. 283.
Birmingham v. Hawkins, 208 Ala. 79.

There is apparently no constitutional objection to this action of the Legislature in view of the decision of our Supreme Court on the various phases of the matter.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
October 20, 1927.

Hon. J. A. Thornhill,
Justice of Peace,
Decatur, Alabama.

Dear Sir.

I have your letter of October 20. You want to know: 1. If a real estate salesman can write deeds and mortgages when he is interested in the sale of property. 2. Can a real estate man write deeds and mortgages for clients? 3. Can a notary public write affidavits?

In answer to your first question, it is my opinion, and I so advise you, that, under Section 6248 of the Code, as amended, a real estate salesman can write deeds and mortgages where he is interested; provided, however, he does not charge any fee for his services.

As to your second question: A real estate man can write deeds and mortgages for his clients. **However, if he charges any fee for so doing, directly, or indirectly, he would violate Section 6248 supra.**

In reply to your third question, it is my opinion, and I so advise you, that there is nothing in said section hereinbefore cited that would prevent a

notary public writing affidavits. But unless he is a licensed attorney, he cannot charge a fee. A notary public has a right to charge a fee for acknowledgments. Provided, however, he only charges the fee fixed by law.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:RF
October 21, 1927.

Hon. J. L. Fox, Jr.,
N. P. & Ex. Off. Justice Peace, Choctaw County,
Silas, Alabama.

Dear Sir:

I have your request for an opinion as to local stock law in your county. You want to know, first, how stock law can be voted by precinct; second, how petition should be addressed and who petition should be addressed to.

In answer to your first proposition, Section 10207 of the Code provides that the courts of county commissioners or boards of revenue in their respective counties have full and complete authority to supervise and direct the holding of election for establishing stock law districts and to declare the results of such election, but said section does not repeal any local law heretofore enacted.

Section 10208 of the Code provides that whenever one-fourth of the bona fide freeholders residing in any precinct in any county owning a freehold estate in any such precinct shall file with the court of county commissioners a petition in writing stating that they desire an election in such precinct to ascertain whether or not a majority of the qualified electors desire a law prohibiting the running at large of stock, and shall deposit with the Probate Judge of such county an amount of money sufficient to defray the expenses of such election, the court of county commissioners shall file such petition with date of such filing, and proceed to inquire whether or not the petition is signed by one-fourth of the freeholders of such precinct. The persons filing such petition shall post in five public places in such precinct notices in writing stating the time and place of holding of such election and the purposes thereof and shall publish said notice once a week for three consecutive weeks in some newspaper published in said county.

It is my opinion, and I so advise you, that upon a strict compliance with Chapter 345, Article 1, of the Code of 1923, if the people in your precinct desire an election to prevent stock runnning at large, you may file the petition as hereinbefore stated.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
October 21, 1927.

Hon. H. B. Abernathy, Judge,
Jefferson County Court of Misdemeanors,
Birmingham, Alabama.

Dear Sir:

I have received your inquiry of October 12th, in which you inquire as to the validity of House Bill 142, providing among other things, an increase of salary of the Judge of the Inferior Court of Jefferson County, Alabama.

I find that this Act was properly advertised prior to its introduction in the House of Representatives. I also find that the Act was passed substantially as published. The Journals show the proper proof of the publication of this notice. This action on the part of the Legislature complies with Section 106 of the Constitution of 1901.

It is true that the Act attempts to increase the salary of the Judge of this Court during his term of office. The second amendment to the Constitution of 1901 provides that this action may be taken by the Legislature in respect to officers of Jefferson County, and the Supreme Court of this State has so held.

Sloss-Sheffield Steel & Iron Co. v. Brooks, 96 So. 81.
Waldrop v. Henry, 92 So. 425.

I find no other objection to the Act as passed. In my opinion, the same is valid.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
October 24, 1927.

Hon. Irby A. Keener,
Deputy Solicitor, Cherokee County,
Center, Alabama.

Dear Sir:

I have your letter of October 15, 1927, in which you request that I advise you whether or not a member of the county board of education can serve as attendance officer and draw compensation for such service provided he does not take any part in his appointment as attendance officer.

The School Code of 1924, Sections 80 and 82 (See pages 42 and 43) contain the provision for the election of members of the county school board and also contain the provision for payment of such members. You will observe that members of the county boards are elected for a definite term; that they perform services for the entire county and that they draw compensation for such services from public funds of the county. This office heretofore rendered an opinion in which it was held that a member of a county board of education is a county officer. This opinion can be found in the opinions of the Attorney General of October 1, 1924, to September 30, 1926, page 220. It is my opinion that a member of a county board of education is a county officer.

The Code of 1923, Section 5024, contains the provision that a county officer cannot contract to perform services for the county and such section provides a penalty for its violation.

In view of the above it is my opinion that a member of the county board of education cannot serve as an attendance officer without violating the provisions of the above Section 5024, of the Code of 1923.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
October 25, 1927.

Hon. Cecil C. May,
Clerk Circuit Court,
Greenville, Ala.

Dear Sir:

I acknowledge receipt of your letter of October 21. You write as follows:

> "The case I had in mind was where a man has taken out his license as provided by law and has procured a tag, but inadvertently or purposely **fails to display the tag** on the car as provided in Acts, 1923, page 290. In this case what would be the solicitor's fee?"

I advise you that the solicitor's fee under the facts outlined above would be $10.00. This comes under Section 3738 of the Code of 1923, which provides for each conviction of a misdemeanor not otherwise provided for.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
October 26, 1927.

Hon. C. F. Winkler,
Judge of Probate,
Greenville, Ala.

Dear Sir:

I have your request for an opinion by this office. You write as follows:

> "On January 16th, 1924, Mr. Bruce Long, who was a resident citizen of Greenville, Butler County, and who retained his citizenship in this county, but who was temporarily living in Asheville, N. C., for his health, married a young lady in West Virginia, and immediately after the marriage went back from West Virginia to North Carolina.
>
> Mr. Long has regained his health, and with his wife, returned this summer to Greenville.

Please advise me if Mrs. Long is entitled to registration. She has not actually been in this State but a few months, but I have always thought that the domicile of the husband was the domicile of the wife.

Inasmuch as the Registrars are in session I will appreciate an early opinion."

Section 178 of the Constitution of 1901 is as follows:

"To entitle a person to vote at any election by the people he shall have resided in the state at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year; provided, that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward in the same county, incorporated town, or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal."

It is my opinion, and I so advise you, that Mrs. Long is not entitled to register until she has resided in this State for two years, in the county twelve months and in the precinct or ward three months. See Sellers vs. Commissioners Court of Geneva County. 51 South. 795.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
October 26, 1927.

Mr. I. G. Hendon,
Superintendent of Education,
Wedowee, Alabama.

Dear Sir:

I have your request for a construction of Section 80 of the Highway Code. You write as follows:

"Please give me a ruling on Section 80, Article G of the Alabama Highway Code. I wish to know if a truck which is owned by an individual and used only for transportation of school children and paid out of regular school funds will be interpreted as 'government controlled.'

"We should find it hard to build bodies of trucks to accommodate children and at the same time not extend further than fenders."

Sub-section "G" of Section 80 of the Highway Code reads as follows:

"The provisions of this section **shall not apply** to governmentally owned or operated vehicles."

It is my opinion, and I so advise you, that if the truck inquired about is used exclusively for transportation of school children under the direction of the School Board of your county, the same would be "governmentally owned or operated." However, should the owner of the truck use it for any other purpose, he would have to comply with Section 80 of the Highway Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
October 27, 1927.

Hon. M. V. Henry, Treasurer,
Jefferson County,
Birmingham, Alabama.

Dear Sir:

You inquire as to the validity of House Bill 728, an Act to amend Section 4 of an Act to establish an inferior court in certain precincts of Jefferson County, excepting certain precincts, in lieu of justices of the peace and in lieu of notaries public; to define the jurisdiction of said court, providing for place of holding court, terms and salary of the judge and officers of said court; the manner of and appointment and election and the payment of their salaries; and you also inquire as to the validity of House Bill 727, an Act to amend Section 3 of said Act which amendment provides an increase in salary of the Judge of the Court.

I have considered the Journals of the House and the Senate which show the Acts to have been passed in compliance with the requirements of Section 106 of the Constitution of 1901. Both of the Acts being local Acts, and finding no constitutional objection to the same, I hereby advise you, that in my opinion, both acts are valid.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to:
Judge Thos. R. Lee,
Birmingham, Alabama.

Written by Mr. Brassell:LM
October 27, 1927.

Hon. John D. Petree,
Judge of Probate,
Russellville, Alabama.

Dear Sir:

I have your request for an opinion by this office construing Section 7 of the Revenue Bill approved July 22, 1927. You write as follows:

"Please advise me whether or not I, as Judge of Probate of Franklin County, am authorized to collect a license of $15.00 from every attor-

ney practicing law in Franklin County under the provisions of Section 7 of the Revenue Bill approved by the Governor on July 22, 1927. Please advise me whether or not this should be paid to the Judge of Probate of the counties or to the State Treasurer.

"Also please advise me whether or not said Section 7 of said Revenue Bill is constitutional. And also whether or not said Section 7 providing for the $15.00 license from practicing attorneys is a double taxation and void because that attorneys are already paying a license of $10.00 to the State."

Section 7 of the Revenue Bill is as follows:

"Each attorney engaged in the practice of law shall pay an annual license of Fifteen Dollars ($15.00) **to the State,** but no license shall be paid to the county. If such business is conducted as a firm, or as a corporation in which more than one lawyer is engaged, each lawyer so engaged shall pay a license; provided, that the license imposed by this section shall not apply until such attorney shall have practiced his or her profession as long as two (2) years. The license tax herein imposed is in addition to the license fee required under Section 11 of an Act approved August 9, 1923 (Gen. Acts, 1923, page 105), to provide for organization, regulation and government of State Bar, etc."

It is my opinion, and I so advise you, that you are to collect the license tax of $15.00 under the section hereinabove quoted. I find no constitutional objections to this section.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
October 27, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Public Accounts,
Capitol.

Dear Sir:

You inquire as to the validity of the following bills:

House Bill No. 853 for the relief of Clifton E. Clements.
Senate Bill No. 65 for the relief of Canady Jackson.
House Bill No. 143 for the relief of Perry J. Coyle.

I have examined each and every bill above mentioned. I find that the provisions of Section 106 of the Constitution of 1901, as to the publication of notice of the intention to apply for the passage of a special act, to have been complied with in each instance. I have considered carefully these special relief acts in view of the Constitution of the State and the sections thereof which might be pertinent.

After a careful consideration of these Acts and each of them, I am of the opinion that each Act was within legislative competency. The require-

ments of the Constitution, in such cases, having been complied with, I am of the opinion that the Acts are valid and that the auditor should, as directed by the Legislature, draw his warrants for the amounts mentioned in each Act, in favor of the respective parties.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Copies to:
Hon. S. H. Blan, Auditor,
Capitol.
Mr. W. L. Slaughter,
First National Bank Bldg.,
Birmingham, Alabama.
Mr. T. B. Ward,
Tuscaloosa, Alabama.

Written by Mr. Knight:RF
October 27, 1927.

Hon. Jesse B. Hearin, Chairman,
County Board of Education,
Montgomery, Alabama.

Dear Sir:

You inquire as to the validity of House Bill 1166. This Act provides an educational system in counties of a certain population, that is, in counties of a population of not less than 75,000 nor more than 100,000.

You ask, particularly, whether the Act is violative of either Sections 106 or 45 of the Constitution of 1901.

The Act was passed as a general Act. No notice of the intention to apply for the passage of the same was published. If the Act be construed a local Act, the Journal of the House, in which the same was introduced, should and must show that notice was published for the prescribed time before its introduction.

Then it must be determined whether the Act is general in its application or local. This must be decided in light of the definition of a general and a local act pronounced by section 110 of the Constitution of 1901.

If the legislation may not at the present moment have application to the State as a whole, then it must be determined whether or not the same might in the future have application to the State as a whole. The Supreme Court of our State has repeatedly taken the position that legislation must not need rest its claim to generality upon its present application, but that the same is general, within the contemplation of Section 110 of the Constitution, if the Act has a prospective application to the State as a whole.

A difference in population has frequently been recognized as a proper basis for classification of the application of general legislation.

Gunter vs. Thompson, 193 Ala. 561.
Board of Revenue vs. Huey, 195 Ala. 83.

The Supreme Court has also announced the rule that where the population classification is reasonably related to the purpose to be affected, the Legislature has a discretion in enacting measures as general laws.

Walden vs. City of Montgomery, 108 So. 231.

In the Walden case, supra, the Supreme Court held that the difference in population, 30,000 to 50,000 prescribed by the Act there in question, was substantial. And also that the classification of the municipalities in that instance was reasonably related to the purpose to be affected.

I am, therefore, of the opinion, that the application of the instant Act is based upon a substantial difference in population and that the classification therein made is reasonably related to the purpose to be affected and within the discretion of the Legislature.

I do not consider that the eventuality provided for in the second section of the Act, that is, the method of selecting the personnel of the Board of Education in the event that a municipality in such a county should have more than 40,000 population, restricts or limits the Act in its application to the State as a whole. It will be readily observed that ample provision is made for the application of the Act to counties of not less than 75,000 population and not more than 100,000 in which there may be no municipality of 40,000 population. I do not find that section two of the Act renders the classification double. Therefore, it is unnecessary to comment upon the Weakley case, 153 Alabama 648, in the light of later decisions of the court.

According to numerous decisions of our court the Act may be construed a general law, with a prospective field of operation.

I am of the opinion that only one broad subject is covered by the Act, and that the subject of the Act is not so broad as that the same is not sufficiently expressed in the title of the Act. Hence I am of the opinion that the act is in nowise violative of Section 45 of the Constitution.

The act having been construed general in its application, or possible application, it is unnecessary to consider the journals to ascertain whether or not the requirements of Section 106 of the Constitution were met.

I am of the opinion that the Act is valid.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
October 28, 1927.

State Tax Commission,
Capitol.
Dear Sir:

This acknowledges receipt of your inquiry of this date. You ask for a construction of Section 20 of the Revenue Act, 1927, as applied to the following facts:

A town of one thousand inhabitants with a corporate area of one mile square lies two miles distant from the corporate limits of a city of more than

one hundred thousand inhabitans. You wish to know what license must be paid for operating a filling station:

1st. Within the corporate limits of said city?

2nd. Within the two-mile space between said city and town?

3rd. Within the corporate limits of said town?

4th. Within the two-mile space beyond said town, but within five miles of said city?

The space above mentioned as lying without the corporate limits of the city but within five miles of said city includes the two-mile space between the city and town, the area included in the corporate limits of the town, and a space two miles wide beyond said town. It is quite evident that all of this space outside the corporate limits of the city falls within each of two classifications contained in said Section 20, and the question is which of these two classifications shall control or shall they both apply and thereby require a license under each classification.

In order to reach a rational conclusion upon the question asked we must seek to ascertain the legislative intent.

If the tax were a municipal tax and levied for municipal purposes, there would be no difficulty in concluding that each corporation would get the license provided for a city or town of its size for doing such business within such city or town, and the only trouble would be as to the outlying territory; but the license in question is not a municipal license and the municipality is in no way interested in it. The license is a state and county license and the classification of territory is purely for the purpose of raising revenue for state and county. It was, in my opinion, the legislative intent in including the space of five miles outside the corporate limits of a town or city to protect those who had paid license for doing business within such city or town against competition of those setting up business within such areas without paying a like license; and this could not be done, in such a case as the one stated, if the license provided to be paid in a town of the population named were to control. Besides, it would be, in my opinion, an absurd conclusion to hold that the Legislature intended that in all the rest of the space within five miles around the corporate limits of the city, the bigger license must be paid while within such corporate limits of the town lying in such district the smaller license may be paid. What could be the reason for the Legislature intending such a foolish result?

It is my opinion that the classifications under said Section 20 apply and control in the order stated and, where there is an overlapping, the larger classification controls. On the other hand it is my opinion that there was no legislative intent of making a person doing such business in such overlapping territory pay two licenses—one under each classification. It seems clear that, should the lower classification control, such control would extend five miles from its corporate limits and include the intervening territory and part, at least of the corporate area of the city as there is no provision for apportioning.

I am, therefore, of the opinion that in all of the territory named in your inquiry the state license is fifty dollars, where only one pump or filler is

used, and for each additional pump fifty dollars. The county license is half that amount.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
October 29, 1927.

Hon. L. F. Sessions,
Judge of Probate,
Ozark, Alabama.

Dear Sir:

I have your request for an opinion by this office.

1. You want to know, is a person entitled to register who is not at the time he makes application 21 years of age, but who will be 21 years of age before the next general election after his registration.

2. Is a person entitled to registration who moves from one county in the State to another, and who at the time he makes application has not been a resident of the county twelve months, but who will have lived in the county 12 months by the next general election after his registration.

The qualifications of electors to vote in this State are prescribed in Section 361 of the Code, which reads as follows:

> "Every citizen of this State who is a citizen of the United States, and every resident of foreign birth, who, before the ratification of the present Constitution of the State, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any of the disabilities named in Section 364 (293) of this Code, and who shall have resided in this State at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the year 1901, and for each subsequent year, shall be an elector, and shall be entitled to vote at any election by the people."

In the light of the above section of the code, it occurs to me that an applicant who offers to register must be twenty-one years of age before he can be registered. Constitution Section 180.

In answer to your second question, I beg to advise that no person is entitled to vote until he has first lived in the state two years, in the county twelve months, and in the precinct or ward three months prior to such an election. See opinion of Attorney General of October 26, 1927, to Hon. C. F. Winkler, Judge of Probate of Butler County, Greenville, Alabama.

Sellers v. Commissioners Court of Geneva County. 51 So. 795.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:AKB
November 1, 1927.

Alabama Public Service Commission,
Capitol.

Gentlemen:

I beg to acknowledge receipt of your letter of October 31st, which contains the following request for an opinion:

> "The Commission requests an official opinion from you upon the following question involving construction of the Alabama Motor Carrier Act of 1927, namely:
>
> Section 7 of said Act requires as follows: 'Each application for a certificate of public convenience and necessity shall be accompanied by an application fee determined on the following basis, namely,' the basis of the amount of fee required being set out.
>
> If such petition is received and filed by the Commission and the petitioner thereafter and before his petition has been acted upon by the Commission, makes application to be allowed to withdraw his petition, and withdrawal of the same is permitted, is the Commission authorized to refund the fee required by the Act to be deposited when such petition is filed?"

I have read Section 7 of the Alabama Motor Carrier Act of 1927, with reference to the fees to be paid by each applicant for a certificate of public convenience and necessity. In the last paragraph of Section 7, I find the following:

> "All amounts collected hereunder shall be paid by the Commission into the **State Treasury within** thirty days after their receipt and shall be kept separate and apart from all other funds by the State Treasurer in a fund to be known as the 'Motor Carrier Fund,' and shall be used only for the purpose of payment of expenses incurred under the provisions of this Act."

I am of the opinion, and so advise, that when a fee is paid into the Commission accompanying said application for a certificate of public convenience and necessity, that it shall be paid into the State Treasury. I am unable to find any provision in the Act itself, or otherwise, whereby the Commission would be authorized to refund the fee that is required by the Act to accompany said petition.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
November 2, 1927.

Mr. B. G. Jennings,
Clerk of the Circuit Court,
Seale, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 28th. You write as follows:

> "If you will look over these certificates of Recall, Affirmance and Opinion and note the dates on which they were received and filed in my office, and tell me when the 15 days are out, I will appreciate it. I marked them filed the day I got them. In a letter received from Col. Troy last night, he states that the application for rehearing was overruled on October 4th. This opinion is dated October 15th and received by me October 17th. Certificate of Affirmance is dated October 25th, and received by me October 26th. I am anxious to do my duty in this matter, but also want to abide by the law which governs cases of this kind. I will thank you to advise me what to do and when to do it."

In reply will say that your duty in the premises, and that of the sheriff, is prescribed by Section 3245 of the Code. This section reads as follows:

> "When the defendant in a case of misdemeanor or felony is sentenced to hard labor or imprisonment, or to the penitentiary, and gives bail pending the appeal, and the judgment of conviction is affirmed or the appeal is dismissed, he is bound by the undertaking of bail to surrender himself to the sheriff, at the county jail, within fifteen days **from the date of such affirmance or dismissal;** and if he shall fail to do so, the sheriff must indorse the bail bond forfeited and a writ of arrest must be issued by the clerk, and if not executed another must be issued, and so on until the judgment has been executed. If the defendant is taken on such writ, or if he shall surrender himself to the sheriff, the sentence must, without delay, be carried out as if no appeal had been taken."

It will be seen from the foregoing section that the fifteen days within which the defendant shall surrender himself to the sheriff begins to run from the date the Court of Appeals acts and not from the date you receive notice of such action. The defendant is presumed to know when an opinion or ruling of the court of Appeals is made for or against him. He is, in contemplation of law, in court and is charged with notice of decisions of the court handed down concerning him. The certificate required by law to be issued to the clerk of the Circuit Court is not for the purpose of informing the defendant of the action of the Court of Appeals; but is for the purpose of informing the clerk of the Circuit Court of the action of the Court of Appeals, so that he may take the steps required by law of him in the premises. The clerk of the Circuit Court is not, in contemplation of law, in the Court of Appeals, and is not presumed to know what is done there. Hence, the law provides that he shall be notified of the judgments and decisions of the Court of Appeals by a certificate of the clerk of the Court of Appeals.

It is my opinion that no affirmative action on the part either of the clerk of the Circuit Court or of the sheriff is required until the proper certificate is received by the Circuit Court Clerk from the Clerk of the Court of Appeals, except that when a defendant surrenders himself to the sheriff after the judgment against him is handed down by the Court of Appeals, the sheriff can then take charge of him and dispose of him, as required by law, even before the certificate is received by the clerk of the Circuit Court.

It is my opinion that the fifteen day period began to run the day after the last decision and judgment was handed down by the Court of Appeals. This appears to have been done October 4, 1927. The certificate attached to the copy of the opinion handed down, I notice, is dated October 15, 1927; but this is the date the certificate was made; the judgment must have been handed down on or prior to that date. In either event the fifteen-day period has expired.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

P. S.: We are herewith returning all papers sent us.

C. C. McC.

Written by Judge Evans:LM
November 2, 1927.

J. W. Grady & Sons,
Stroud, Alabama.

Gentlemen:

This acknowledges receipt of your letter of October 31, 1927. Under Section 20 of the Revenue Act, 1927, the same license is required of a person who operates a filling station within five miles of a city or town as is required of one who operates in such city or town. If your filling station lies within five miles of the corporate limits of a town or city having a population of one thousand and less than five thousand inhabitants, then you pay under that classification. The fact that a person may live in a town of less than a thousand inhabitants would not, in our opinion, exempt him from any part of the license required by his proximity to the larger city or town.

It is our ruling that where the territories of the two classifications overlap, as is possibly your case, though you do not say, the larger classification controls. It was certainly not the legislative intent that he should pay for both. If not, then which of the two would control? There is no means of apportioning territory provided. One or the other must be given precedence. Which one should it be? In our opinion it should be the larger. It will be remembered that the license provided for by said section is not a municipal license. The municipality has no interest whatever in the license, and the classification of territory is for state and county purposes only. We think it would produce a peculiar situation if the mere fact of being in a smaller town within five-mile limit of the larger town or city would reduce the license to be paid within such five-mile limit, while the larger license would have to be paid in all the rest of the five-mile limit where there is no city or town.

Besides, if in such a situation the classification for the smaller town controls, it would control not only within its limits, but five miles beyond its limits and would control not only the intervening space lying between such municipal corporations but also as much of the corporate limits of the larger town or city as lies within five miles of the corporate limits of the smaller town. We are unable to believe that such was the legislative intent.

It is our opinion that it was the legislative intent to relieve a person, who pays a license to do business in a city or town, of competition within such city or town, and within five miles of the corporate limits of such city or town, which does not pay a like amount of license.

We are aware that the proper construction of said Section 20 as applied to the facts of your case is not without difficulty; but the foregoing seems to us to more nearly meet what we deem to have been the legislative intent than any other construction that has been suggested to us or that has occurred to us.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Note: For general information. C. C. McC.

Written by Mr. Rayburn:AKB
November 2, 1927.

Dr. S. W. Welch,
State Health Officer,
Capitol.

My dear Sir:

I acknowledge receipt of your letter of October 31st, which reads as follows:

> "I have been requested to furnish certified copies of birth and death certificates free of charge to veterans of the World War. Please advise me if we would have the authority to do so. You will find the law governing this point in Section 1087 of the 1923 Code."

In reply will say that Section 1087 of the Code provides that only three parties may receive certificates of birth and death gratuitously, namely: any parent or guardian and the United States Census Bureau.

These parties are furnished such certificates free of charge under certain circumstances, that is to say; the parent or guardian is entitled to a certificate limited to a statement as to the date of birth of any child when the same shall be necessary for admission to school, or for the purpose of securing employment; and the United States Census Bureau is entitled to certain copies of births and deaths without payment of the fee.

The foregoing are the only ones exempted from the payment of the fee due the Registrar.

You are therefore advised that veterans of the World War are not entitled to certified copies of birth and death certificates free of charge.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 3, 1927.

Hon. George Thigpen,
Superintendent of Insurance,
Capitol.

Dear Sir:

In reply to your inquiry of recent date will say that it is my opinion that mutual insurance companies, incorporated, and doing business as provided by Article 7 of Chapter 306 of Code, 1923, are subject to the provisions of Section 3 of the Revenue Act of 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 3, 1927.

Hon. George Thigpen,
State Superintendent of Insurance,
Capitol.

Dear Sir:

In answer to your inquiry of recent date will say that, in my opinion, reciprocal or inter-insurance contracts provided for under Article 3 of Chapter 306 of Code, 1923, are in no way affected by Section 3 of the Revenue Act, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
November 3, 1927.

Hon. S. M. Dunwoody,
Commissioner of Agriculture & Industries,
Montgomery, Alabama.

Dear Sir:

Under date of the 3rd instant you submitted to the Attorney General a copy of a memorandum of agreement providing for the inspection of poultry flocks, eggs, baby chicks and hatcheries and a copy of a memorandum of agreement relative to the gathering of agricultural statistics. With these copies, you submitted a copy of the resolution adopted by the State Board of Agriculture for carrying the agreements into effect, and requested an opinion relative to the validity of same. You have the opinion, under date of October 4th, in answer to this request.

Now, comes your further inquiry, as presented in person by you and Mr. F. W. Gist, the Federal Agricultural Statistician, in the form of a proposed memorandum of agreement between the United States Department of Agriculture relative to the validity of engaging in the "gathering of agricultural statistics." It is noted that this proposed agreement, or plan of work, is be-

tween the Bureau of Agricultural Economics of the United States Department of Agriculture and the Alabama State Board of Agriculture, while the proposed agreement, submitted by you on the 4th instant, was between the said Bureau, the Alabama Extension Service and the State Board of Agriculture—two agricultural agencies of the State as defined in the Agricultural Code.

It seems unnecessary to offer further opinion as to the law relative to the proper and only agricultural agency, as defined in Article 4 of the Agricultural Code, authorized to gather, compile and publish agricultural statistics, other than that given in answer to your previous inquiry.

By way of amplification and classification of the opinion you have, as urged by you, will say that the law, as contained in Article 4 of the Agricultural Code, as I understand it, defines and limits the functioning of the agricultural agencies of the State and, therefore, requires each agency to confine its work, exclusively, to the field of work assigned to it. It follows that, under the expressed purpose of the Agricultural Code "To prevent conflict or overlapping of work by the agricultural agencies," (See Section 19 of Art. 4), what is assigned one agricultural agency has not been assigned and cannot be engaged in by another agricultural agency. Since such is the policy and purpose of the Agricultural Code, it is my opinion that it cannot be violated either directly or indirectly.

As the work of gathering agricultural statistics is a part of the defined functions of the Department of Agriculture and Industries (Sec. 23 of Art. 4) and is not a part of the defined functions of the other agricultural agencies of the State (See Secs. 21 and 22 of Article 4), and as, in the discretion of the Legislature in assigning "To the Department of Agriculture and Industries its proper work" (See Section 23 of Article 4). Article 6 of the Code **requires** the Commissioner to gather, compile and publish agricultural statistics, the Commissioner of Agriculture and Industries needs only to be concerned about setting up and conducting this work in the most efficient manner. In his discretion (See Section 32 of Article 6) he may proceed with this work purely as a State project, or, he may, as authorized by Section 33 of the Code and with the approval of the State Board of Agriculture, name "the statistician assigned by Alabama by the United States Department of Agriculture, upon such terms as may be agreed upon with the United States Department of Agriculture," to assist him in doing or to do for him any part or all of this work.

With further regard to the validity of the proposed memorandum of agreement between the United States Department of Agriculture, Bureau of Agricultural Economics and the Alabama State Board of Agriculture, as submitted the terms "State Board of Agriculture," Commissioner of Agriculture and Industries," and "Department of Agriculture and Industries" are in my opinion, substituted one for the other without due regard for the law. It is my opinion that the memorandum of agreement should be between the Department of Agriculture and Industries and the United States Department of Agriculture, and should have the approval of the State Board of Agriculture insofar as employment (See Section 18) and expenditures (See Section 488) are concerned. In all procedures under the Code neither the Commissioner, as the Chief Executive officer of the Department of Agriculture

and Industries, nor the board should fail to function properly, as their powers and duties are distinct and clearly defined by the laws. The Commissioner (See Section 18), having the approval of the Board, makes all appointments and dismisses such employees as are dismissed.

The proper location of headquarters for the "Gathering of agricultural statistics" can be no more a question of doubt than would be the question of where to locate headquarters for the administration of laws relative to foods, drugs, and fertilizer or any other duty of the Commission. The Commissioner of Agriculture and Industries has the same responsibility in the case of one as in the other and his office located, as it is, at the State Capitol by Section 885 of the Code of Alabama, is the proper headquarters for all requests for information and services required of him to be performed. As to the office of the Federal agricultural statistician assigned to Alabama it is with the United States Department of Agriculture in Washington to determine, insofar as headquarters for direction and information are concerned, and he must, in my opinion, be stationed with the Department of Agriculture and Industries when representing the Commissioner of Agriculture and Industries, as are the chiefs of other divisions of the commissioner's work.

It is my opinion that it would be contrary to the Agricultural Code, in its letter, purpose and intent, for the Department of Agriculture and Industries to establish headquarters for any of its departments to carry out the work assigned to said department at any point other than its office at the Capitol.

Yours truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:LM
November 3, 1927.

P.
Sec 660

Hon. D. S. Baber,
Judge of Probate,
Heflin, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of October 28, 1927, in which you ask to be advised on the following questions:

1. At the last session of the Legislature, there was a local road law passed for Cleburne County. Do the Commissioners have to go according to that law, or is it at the discretion of the court as to whether they enforce it?

2. Can the court divide the county into four districts and use the commissioner in his district as a road supervisor for that district?

3. How much time can a county commissioner put in on road and bridge services, as much as half of the time?

4. When a claim is put in by the commissioner for road and bridge service, can it be paid out of the gas fund?

5. Can the road supervisor employ one of the county commissioners to superintend a job of work, or can a commissioner work as a laborer on the roads and bridges?

In answer to your first question, I find that House Bill No. 863, approved by the Governor on September 8, 1927, is the bill referred to, and I am herewith enclosing a copy of the bill for your information. The Court of County Commissioners has no discretion as to carrying out the terms of this bill. The enclosed bill should be read and enforced in connection with Chapter 207 of the Code of 1923.

In answer to your second question, I am unable to find any authority to divide your county into four districts and use the commissioner in his district as road supervisor for that district. However, under the broad powers given to Commissioners Courts, they might assign certain sections of the county to certain commissioners. This would be a matter of discretion that your Commissioners Court could exercise. This authority can be found in Section 6754 of the Code of 1923, which reads as follows:

"The court possesses original and unlimited jurisdiction in relation to the establishment, change or discontinuance of roads, bridges, causeways, ferries and stock law districts within the county, except where otherwise provided by law, to be exercised in conformity with the provisions of this Code."

In answer to your third question, I beg to advise that the compensation of the Commissioners is regulated by Section 6771, of the Code of 1923, which reads as follows:

"Each member of the court of county commissioners and board of revenue in each of the several counties of the State of Alabama shall be paid out of the county treasury of their respective counties for their services the sum of three dollars per day while occupied in the discharge of their duties as such members of the court of county commissioners, or board of revenue, and five cents per mile in going to and returning from their respective courts, and the sum of three dollars per day while occupied in the discharge of their duties in letting out, inspecting and accepting, building, or repairing, of any county bridges, or county buildings or works, and five cents per mile for each mile necessarily traveled by them in so doing, said sum to be paid on warrants drawn on the county treasurer on the order of the court of county commissioners or boards of revenue. No allowance shall be made to any commissioner for per diem or mileage for inspecting roads, bridges, etc., except when acting under authority of an order of the commissioners' court, previously made."

This section must be strictly complied with.

In answer to your fourth question, I beg to advise that Section 83 of the Revenue Act of 1923, Acts Legislature 1923, page 197, provides that "all funds derived by the several counties from said tax shall be expended exclusively for maintenance and repair of roads, highways and bridges in said counties."

In answer to your fifth question, I beg to advise that the Road Supervisors cannot employ a member of the Commissioners Court to superintend a job of work or employ a commissioner to work as a laborer on the roads and bridges. This would be against public policy for the reason that the Commissioners have supervision over the acts of the Supervisor of roads and would have to pass on their own employment and fix their own compensation.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 5, 1927.

State Highway Department,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of recent date in regard to acquisition of right-of-way in the City of Decatur for building State highways connecting the county seat of Cullman County with the county seat of Morgan County, and the county seat of Morgan County with the county seat of Limestone County. Under the law as I understand it, it is the duty of the State Highway Department to locate the highways from county seat to county seat so as to form continuous highways through the State.

The facts of the case, for which you ask our opinion, as I understand them, are as follows:

There is a trunk state highway leading from Cullman, the county seat of Cullman County, to Decatur, the county seat of Morgan County; there is also a trunk State Highway, leading from Athens, the county seat of Limestone County, to Decatur, the county seat of Morgan County. These two highways, under the program of the State Highway Department, are to be connected by means of a bridge over the Tennessee River and a street through part of the City of Decatur, so as to make a continuous highway from Cullman and other county seats, to the south, to Athens and other places to the north. There is a distance of a fraction of a mile in the City of Decatur approaching the south end of the bridge across the Tennessee river, along the line located by the State Highway Department for said State Highway, where the right-of-way has not been acquired and you wish to know by what means, under the law, this right-of-way may be obtained so that the State Highway Commission may make the connected highway as already stated to be the purpose of the road laws of the State.

In answer to your inquiry will say that, in my opinion, it is not only the privilege, but the duty, of the court of county commissioners or other bodies with the powers of a court of county commissioners, to acquire by purchase or condemnation, the right-of-way in every instance where the State Highway Commission has authority to locate and construct a state highway; wherever the State Highway Commission has the authority to construct a highway the court of county commissioners, in my opinion, has the right and authority to acquire by purchase or condemnation the right-of-way for such construction.

I am basing my conclusions upon the following provisions of the law:

1. Section 1347 of the Code, 1923, giving general powers to the courts of county commissioners with reference to roads in the county except as limited by local or special statutes of the state.

2. Section 1352 of the Code, 1923, giving to Boards of Revenue, Courts of County Commissioners, or other like governing body the right of eminent domain for the purpose of establishing and changing roads, bridges and ferries in their respective counties. Of course, giving them the right of eminent domain is for the purpose of procuring rights-of-way where needed.

3. Section 6 of the Highway Code approved August 23, 1927, which provides the following:

"The State Highway Commission * * * shall have authority to make contracts or agreements to construct * * * the roadway only of the street which will serve to connect the state highway constructed or repaired by the State Highway Department, within any town or municipality, the population of which shall not exceed five thousand inhabitants, as given by the last Federal census, etc."

4. Section 31 of the Highway Code, approved August 23, 1927, which is as follows:

"The right-of-way deemed necessary by the State Highway Department for a bridge or road constructed under the provisions of this article shall be acquired by the county in which such road is to be located without expense to the State. Should the county fail or refuse to acquire the necessary right-of-way, the State, through the State Highway Department, shall have authority, at the expense of the county, to acquire such right-of-way, either by purchase or by exercise of the right of eminent domain in condemnation proceedings, as is provided for under the laws of this State."

As I understand the fact, the population of the City of Decatur, as given by the last Federal Census, is 4,650. This places Decatur within the class of cities where the State Highway Department may construct a street to connect the trunk state highways mentioned in the first part of this opinion, to-wit: the highway coming from Cullman to Decatur with the highway coming from Athens to Decatur. So, we find here every condition met for the operation of the law as provided in said Section 6 for constructing by the State Highway Department of the roadway of a street connecting two highways constructed or repaired by the State Highway Department. It would, in my opinion, be irrational to conclude, from the foregoing provisions of the law, that it was the legislative intent that the State Highway Commission should construct the roadway of a street, but that there was no method provided by which the right of way could be procured.

Section 6 of Article 1 of said Highway Code provides for the State Highway Department to construct such a street, and Section 31 of Article 1 provides that "the right-of-way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the county in which such road is to be located, without expense to the State." To hold that the word road used in said

Section 31 does not include the roadway of the street mentioned in said Section 6, would in my opinion, give too narrow a meaning to the word "road," since the whole highway law in regard to trunk highways shows the legislative intent that the counties shall procure the right-of-way wherever the State Highway Department locates a trunk highway for construction.

Section 6 confines the construction authorized to the roadway of the street, and, of course, it is the right-of-way for the roadway that I am speaking of when speaking of obtaining the right-of-way. The word "street" sometimes has a broader meaning than the mere roadway, hence the Legislature limited authority to contract for construction, in said Section 6, to the roadway.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
November 7, 1927.

Hon. John H. Daniel,
Clerk Circuit Court,
Carrollton, Alabama.

Dear Sir:

This acknowledges receipt of your letter of October 27th. You write as follows:

"The question confronting me now is this:

"My interpretation of the Code of 1923 is that it provides that the bonds of all county officers must be paid for by the county in which such officer holds office. I failed to make application to the county for the payment of my bond in 1925 and also in 1926. I wish to know if I can legally make application and recover the amount of money that I paid in the above mentioned years as I paid this out of my own money."

In reply will say that the only provision of law to be found for the county to pay premiums on bonds of county officers is found in Section 2658 of the Code of 1923.

The statute clearly shows that it was the Legislative intent that its provisions should apply to terms of office commencing subsequent to the adoption of the Code of 1923 in which it first appears. It says:

"Bonds of county officers made by surety or guarantee companies. After the adoption of this Code the officers and authorities authorized to fix and approve or to require additional bonds as to all county officers shall require that the bond of such county officer be made by some surety or guarantee company or companies authorized by the laws of this State to make such bond; and the premiums of such bonds shall be a charge against the county and payable out of the county treasury upon the certificate of the officer or agency requiring, fixing or approving the bond."

This section was not intended to apply to the terms of office then current where bonds, in contemplation of law, had already been made and approved. Your term of office began in 1922 and ends in 1928.

Section 3269 of the Code of 1907 which was the law when your term of office began and which is brought forward into the Code of 1923, unchanged, provides that you make bond before entering upon the discharge of your duties as Circuit Clerk. At that time you had the privilege of making bond with private individuals as surety and, if you had done so, there is no provision of law for compelling you, during the current term, to make a new bond with a surety company.

The law in Section 2658 of the Code, 1923, makes it compulsory that the bond to be approved, "after the adoption" of the Code, should be made by some surety company and that the premium thereon shall be paid by the county. This necessarily refers to bonds for terms of office beginning after the adoption of the Code. It was permissible before the adoption of the Code, 1923, for county officers to make bond in some surety company, but the officer, in such case, had to pay the premium on the bond.

I am, therefore, of the opinion that you will have to pay all premiums on your bond during the current term of your office.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:LM
November 8, 1927.

Hon. M. V. Henry,
Treasurer of Jefferson County,
Birmingham, Alabama.

Dear Sir:

You inquire as to the validity of Act No. 247, S. B. 431. This act creates the office of County Attorney in counties having a certain population.

The Supreme Court has held that a population classification not arbitrarily fixed is a proper basis for classification in which the legislature may exercise a discretion in enacting general laws.

Walden vs. City of Montgomery, 108 S. 231.
Board of Revenue vs. Huey 70 S. 744.

In the opinion of the writer, according to decisions of the Supreme Court, the act in question may have a prospective application to all counties in the state and hence may be enacted as a general law.

In the opinion of the writer the legislature has the authority to create the office of County Attorney.

After having carefully examined the act I find no constitutional objections either to the manner in which it was enacted, or to the act. In my opinion, the same is valid.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:LM
November 8, 1927.

Hon. G. A. Ward,
Deputy Solicitor,
Geneva, Alabama.

Dear Sir:

I have your letter of recent date stating that an Act was passed and approved increasing the salary of the deputy solicitor of Geneva County to $100.00 per month. You ask that I advise you whether or not a new appointment would have to be made to give the deputy solicitor this increase.

The Court of Appeals of Alabama held in the case of **Stone, County Treasurer, v. State, ex rel Strain,** 89 So. 824, that a court reporter holding a position under appointment had no term of office within the contemplation of the Constitution of 1901, Section 281, because the Act providing for his appointment gave the appointing judge the power to remove the reporter at pleasure.

This office rendered an opinion to Hon. Winston Huddleston, Circuit Solicitor, on July 19, 1927, which opinion stated that a deputy solicitor is removable at the pleasure of the appointing circuit solicitor and for that reason, he does not have a term of office such as is referred to in the Constitution of 1901, Section 281. It was also held in this opinion that the salary of a deputy solicitor might be increased because he has no definite term of office.

In view of the above, it is my opinion that a new appointment will not have to be made in order to give the deputy solicitor of Geneva County the increase in salary, which you refer to in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
November 8, 1927.

Hon. J. C. Coleman,
Clerk Circuit Court,
Eutaw, Alabama.

Dear Sir:

I have your request for an opinion by this office relative to confessions of judgments. You write as follows:

> "Kindly give me your opinion as to whether in confession of judgments or costs paid in open court the clerk shall include the feeding of the defendant while in jail. On the back of the sheriff's feed bill every month the clerk certifies that if defendant is convicted the costs of feeding him will be taxed as other costs. Attorneys here contend that I should not tax the bill of feed in with other court costs where costs are paid in open court or confession of judgment is made. Your opinion will be very much appreciated."

I wish to call your attention to Section 5288 of the Code, which reads as follows:

"When fine is assessed, the court may allow the defendant to confess judgment, with good and sufficient sureties, for the fine and costs." Section 5289:

"Execution may issue for the fine and costs, or any portion thereof remaining unpaid, as in civil cases."

Mr. Justice Haralson in the case of ex parte State, 121 Ala. 327 said:

"In no case **shall any defendant,** on conviction, be sentenced to **hard** labor for the payment of sheriff's feed for feeding him while in **jail.** Such fees are to be paid by the State."

I advise you that you cannot tax the defendant in your bill of costs for feeding him while he was confined in jail.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:RF
November 9, 1927.

Mr. B. G. Wilson,
Attorney at Law,
Demopolis, Alabama.

Dear Sir:

Your favor of November 1st addressed to Hon. Woolsey Finnell, Highway Director, has been referred to this office for an answer. You desire to know whether or not a firm doing contracting work on roads in Alabama is required to pay a license.

Under Schedule 34, page 173, of the Revenue Code of Alabama, you will find that such companies are required to pay a license.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Copy to Highway Director.

Written by Mr. Brassell:HF
November 9, 1927.

Hon. S. M. Dunwoody,
Commissioner of Agriculture & Industries,
Montgomery, Alabama.

Dear Sir:

I have your request for an opinion by this office for a construction of Sections 404 and 405 of Article 34 of the Agricultural Code. You write as follows:

"In connection with the operation of Sections 404 and 405 of Article 34 with reference to insurance on cotton 'stored in the open,' several

warehousemen have asked for an opinion as to whether or not they are exempt under the warehouse laws from insuring cotton 'stored in the open' when or in case the cotton is insured by a merchant, cotton buyer or other concern owning the said cotton.

"As several warehousemen are now failing to insure such cotton as is stored in the open and insured by the owner until I advise them what the law requires in such instances, I shall deeply appreciate your opinion with reference to the application of the laws to such cases."

Sections 404 and 405 of Article 34 reads as follows:

"Section 404. Whenever any warehouseman accepts for storage any cotton or other article of value and keeps or stores the same where it is exposed to weather conditions, or in any place except within the warehouse, there shall be endorsed on the warehouse receipt given for such cotton or other articles the words **'STORED IN THE OPEN'** in such manner as may be prescribed by the rules and regulations promulgated by the State Board of Agriculture."

"Section 405. A warehouseman who stores cotton or any other articles in the open or in any place except in the warehouse **shall keep the same insured against destruction or injury by fire,** and shall be responsible and liable for all injury or damage suffered from the weather or any other cause by reason of said cotton or other article being stored in the open or in any other place except in the warehouse. Said warehouseman shall also have the same responsibility and liability for said cotton or other article as if the same was stored or kept in the warehouse. The warehouseman's bond shall also cover all duties and liabilities of a warehouseman imposed by this and the preceding section."

It is my opinion, and I so advise you, that all warehousemen **who accept cotton for storage must** under the quoted sections of the Agricultural Code, **insure it.**

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
November 14, 1927.

Hon. M. V. Henry, Treasurer,
Jefferson County,
Birmingham, Alabama.

Dear Sir:

You inquire as to the validity of Act No. 622, Senate Bill 580, which provides for the appointment and compensation of bailiffs of circuit court in all counties of the State having a certain population, or more.

The population classification made in the Act by the Legislature has been recognized as a proper basis by the Supreme Court in this State, and the Act, while at present, may be applicable to only one County, may have a prospective application to the State as a whole.

Birmingham Elec. Co. v. Harry, 111 So. 41.

I do not find that the method of appointment of the bailiffs mentioned in the Act or the amount of their compensation are obnoxious to any Constitutional provision. This office has frequently held that the compensation or salary of an officer who has no definite term of office may be increased or diminished. Such officers do not come within the influence of Section 281 of the Constitution, this section applying only to persons holding an office for a definite or fixed period.

I am of the opinion the Act in question is valid.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Copy to::
Hon. Ed Newman,
Care Circuit Court (Criminal Div.)
Birmingham, Alabama.

Written by Mr. Brassell:LM
November 14, 1927.

Hon. C. E. Thomas,
Superintendent of Banks,
Capitol.

Dear Sir:

I have your request for an opinion construing Sub-division 2, Section 3, H. B. No. 935. You write as follows:

"Inclosed you will find memorandum of a request from one of our building and loan associations as to the meaning and the powers of Subdivision 2, of Section 3, of the recent Act No. 935, a copy of which I am sending you.

"If you will please give me your interpretation of this section, I shall be very grateful."

Subdivision 2, Section 3, reads as follows:

"An interpretation of Section 3, Sub-division 2, of House Act 935 with reference to the shares and certificates of an association being a local investment for the funds of fraternal, mutual and legal reserve insurance companies and fiduciaries of trust funds, and whether or not burial associations would be permitted to invest their funds in either the shares or certificates of a building and loan association. Can a guardian invest a trusted estate in either the shares or certificates of an association?"

The shares and certificates of an association shall be a legal investment for the funds of fraternal, mutual and legal reserve insurance companies, banks and such other fiduciaries as are not forbidden by the Constitution of Alabama.

From the reading of the foregoing I am of the opinion that burial associations would be permitted to invest their funds in the shares and certificates of a building and loan association under Sub-division 2 of said act.

I wish to call your attention to Section 74 of the Constitution which is as follows:

> "No act of the Legislature shall authorize the investment of any trust funds by executors, administrators, guardians, or any other trustees in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made."

It is my opinion, and I so advise you that, the funds of an executor, administrator, guardian or other trustee, cannot be invested in a building and loan association. To do so would be a plain violation of Section 74 of the Constitution.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
November 14, 1927.

Hon. William S. Sherrill,
Deputy Solicitor,
Athens, Alabama.

Dear Sir:

I have your request for an opinion by this office on the authority of a Justice of the Peace. You write as follows:

> "There was a charge of first degree murder pending in a Justice of the Peace Court for preliminary hearing. I was to have appeared to represent the State of Alabama and the defendant had employed an attorney to represent him. Several days before the date set for hearing the attorney for the defendant saw the Justice of the Peace and there was an agreement to allow the defendant bond of $1,000 to await the action of the Grand Jury. I knew nothing of this agreement nor of the bond, etc.
>
> "What authority has a Justice of the Peace to allow bond in such case without any hearing at all? The defendant had been arrested by the sheriff and held in jail. It seems to me that the Justice has assumed powers beyond his authority."

I wish to call your attention to Section 3846 of the Code. From a reading of this section it is apparent that a Justice of the Peace has preliminary jurisdiction co-extensive with their counties except in precincts where an inferior court has been created in lieu of Justice Courts, and the jurisdiction of Justices of the Peace have been conferred on such inferior courts.

Under Chapter 213, Article 3 of the Code, I find no authority for a justice admitting a defendant to bail where he is charged with a capital offense, without an examination.

I further advise you that you should, under the authority of ex parte Crawlin, 92 Ala. 101, have another warrant issued for the defendant.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:ML
November 15, 1927.

Mr. George H. Thigpen,
Superintendent of Insurance,
Capitol.

Dear Sir:

In reply to your inquiry of recent date will say that I know of no law which authorizes you, at the expense of the State, to have printed the insurance laws of the State. If, in your opinion, such printing is necessary for the proper administration of the work of your office, you should apply to the Governor, Secretary of State and Attorney General under Section 2904 of the Code 1923. These three will pass upon the necessity for such printing, and if, in their judgment, such printing is necessary and proper for use in your department of State, they may have it done as provided by said Section 2904.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
November 15, 1927.

Hon. Paul M. Page,
County Solicitor,
Prattville, Ala.

Dear Sir:

I have your request for an opinion construing local acts of Alabama 1923, page 124. You want to know if the published notice was a sufficient compliance with the Constitution.

It is true that the published notice omitted the words "notice of intention to apply for the passage of the act," here under consideration. This would not invalidate the act.

The Supreme Court in the case of Hagan vs. Limestone County 160 Ala. 544 said:

> "A constitution **should be construed** according to the plan, common-sense meaning of the terms employed and it should not be given a narrow or technical construction."

The House Journal at page 268 discloses that the act was published in full.

The courts, speaking of publication of notice as required by Section 106 of the Constitution further say:

"All the law requires as to the publication and proof of the notice under Section 106 of the Constitution is that it should contain the substance of the bill, and where the proposed bill is published in full, it is **certainly a compliance with the Constitutional provision.**"

Jacobs v. State, 144 Ala. 98.

It is my opinion, and I so advise you, that the Legislature complied with Section 106 of the Constitution when it repealed the act under consideration.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Nov. 15, 1927.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

I have your request for an opinion with reference to a construction of Sections 4852 and 4859 of the Code of 1923. Your request is as follows:

"Please inform me if under the authority imposing upon the State Prison Inspector the duty of ascertaining the cost of management of the jails, and of keeping the inmates, and whether the money appropriated for such purpose is properly expended therefor, and the authority contained in Section 4859 to make rules and regulations with reference to the management of the jail, etc., including the feeding of the prisoners, the State Prison Inspector has the authority to make out a suggestive ration, setting out the kinds or variety of foodstuff, with the approximate quantity of each article to be used as a guide for the sheriffs in feeding prisoners in the county jails?"

In answering your inquiry I quote sections 4852 and 4859 of the Code of 1923. Section 4852 reads as follows:

"The State Prison Inspector shall inspect at least twice each year, if practicable, and as often as he may deem necessary, in person or by his chief clerk or deputy inspectors, every county jail, almshouse, and every municipal jail or prison in any incorporated town or city in this state having ten thousand or more population, according to the last federal census, and shall aid in securing the just, humane and economic management of all such institutions; and shall investigate the management of all such institutions the conduct and efficiency of the officers or persons charged with their management. He shall require that the buildings and grounds of such institutions be kept in the best sanitary condition; make a detailed report to the governor after each visit of the number of inmates in each such jail, prison and almshouse, their condi-

tion as to health, the condition in which the buildings are kept, the arrangement for the sanitation of buildings and grounds, the cost of the management of such institutions, and of keeping the inmates, and whether the money appropriated for such purposes is properly expended therefor, and he shall at the same time give a copy of his report to the court of county commissioners, board of revenue, city council, or other board or body having control over the jail, prison, or almshouse dealt with in such report, together with such recommendation for the betterment of the conditions thereof as he may deem necessary."

Section 4859 as amended, reads as follows:

"The inspector may formulate and promulgate such rules and regulations, as he may deem necessary with reference to hygiene, sanitation, cleanliness, healthfulness, feeding of prisoners, management and security of all jails, including town and city prisons, and almshouses and such rules and regulations shall have the same force and affect as law, provided that this section cannot be construed as authorizing, the State Prison Inspector to require the sheriff to make out what is commonly known as the daily ration sheet or expense account."

It is my opinion, and I so advise you, that the State Prison Inspector, under Section 4859 of the Code as amended, has authority to make such rules and regulations as he may deem necessary with reference to the feeding of prisoners, and such rules and regulations have the same force and effect as law. But you cannot require the sheriff to make out a ration sheet or expense account.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:ML
November 16, 1927.

Hon. G. H. Howard,
Judge of Probate,
Wetumpka, Alabama.

Dear Sir:

This acknowledges receipt of your letter of November 12th. You write as follows:

"Please advise me whether we should make any distinction in the collection of deed tax on a deed where the grantee assumes the obligation of a mortgage already existing and on record and in the case where there has been no outstanding mortgage but one given as part of the purchase price at the time the deed is made and filed for record at the same time the deed is filed."

In reply will say that Section 21½ of the Revenue Act, 1927, contains the following provision:

"Provided that only the value in excess of any mortgages or vendor's liens, upon property within this State, on which the mortgage tax has been paid shall be taxable under this section," etc.

So, with each deed filed for record these questions must be answered:

1st. Is there a mortgage or vendor's lien upon the property conveyed by the deed? 2nd. If so, has this mortgage or vendor's lien been recorded and the mortgage filing tax paid? 3rd. If so, what is the value of the property conveyed in excess of the mortgage debt or the debt secured by the vendor's lien? The tax in such a case is measured by th excess value.

It is is immaterial when the mortgage was made or vendor's lien created if the instrument is recorded, or filed for record, and the filing tax is paid. If part of the mortgage debt or the debt secured by the lien, has been paid when the deed is executed, only the balance due on the mortgage debt or debt secured by vendor's lien should be deducted from the value of the property.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AB
November 17, 1927.

Mr. Walter M. Thompson, Register,
Etowah Circuit Court,
Gadsden, Alabama.

Dear Sir:

This acknowledges receipt of your letter of November 9th. You write as follows:

"I am in receipt of your letter of November 7th. Opinion written by Judge Evans, in reply to my letter of October 21st as to official bond made by a surety company, as Register of Etowah Circuit Court. I was appointed to succeed Judge J. A. Bilbro on December 29, 1924. It is true that the present term of office began in 1922 and ends in 1928. I was advised after reading Section 2658 of the Code of 1923, that I had to make a bond in compliance with said section of the Code with a surety company.

"I would like for you to give me an opinion in my case. My appointment was made after the adoption of the Code of 1923 and in such cases if the county would not be the one to pay the premium on the bond."

In reply will say that the opinion sent fully covers your case. We wrote you that Section 2658 of the Code, 1923, did not apply to a term of office current at the time the Code was adopted. You are serving out a term of office that was current at the time the Code was adopted. Hence, the section of the Code does not apply to your case. It will apply to the next term of the office which you hold, beginning sometime in the year, 1928. Your appointment was made some time after the adoption of the Code, but the term

of office which you are holding was current at the time of the adoption of the Code, though then filled by your predecessor in office. The kind of bond required by Section 2658 of the Code, 1923, was permitted by the law prior to the adoption of said Code, and which was in effect at the time the term of office began which you now hold; but the premium was to be paid by the officer and not by the county. It was also permissible at that time to make a bond with personal security and, in my opinion, this law has not been changed so far as the current term of your office is concerned. Such has been our ruling since the adoption of the Code 1923. In one case the attempt was made to force a Judge of Probate, who had made a bond with personal security to make a bond as provided by said Section, and we held that it could not be done during his current term. If elected for another term, he will have to comply with Section 2658.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 17, 1927.

State Highway Department,
Capitol.

Dear Sirs:

This acknowledges receipt of your inquiry of recent date. You desire to know:

1st. If it is permissible under the law for the State Highway Department to contract and maintain two separate and distinct State Trunk Highways for a distance of twelve miles in Perry County, connecting the county seat of Perry County with the county seat of Bibb County?

2nd. Can the State Highway Department construct and maintain both of said roads provided the County of Perry will contribute to the State Highway Department the sum of sixty thousand dollars, an amount substantially sufficient to construct one of said roads?

3rd. If so, can the County of Perry appropriate said sixty thousand dollars, or any part thereof, to the State Highway Department out of the gasoline money apportioned to Perry County?

4th. Has the State Highway Department the authority, under the law, to contract with a contractor to whom the County has let a contract to build one of said roads for the county for the building of such road by the State Highway Department with county funds a part of which is derived from the gasoline tax?

In reply to your questions will say that Section 40 of the Highway Code, approved August 23, 1927, reads as follows:

"The State Highway Commission or Highway Department shall locate, construct and maintain highways and State trunk roads so as to connect each county seat with the county seat of the adjoining county by the most direct and most feasible route by a permanent road, having due

regard to the public welfare and to connect the county seats of the several border counties at or near the State line with a public road in the border states. No contract or agreement for the location or construction of any road or highway in this State shall be made unless such road or highway shall tend to connect the various county seats of the state by the most direct routes as provided for in the Act approved September 30, 1919, and also an Act approved October 29, 1921, but this article shall not interfere with any road contracted for before the 24th day of September, 1923."

This section is in accord with and is supported by both the amendments to the Constitution of the State, each providing for sale of bonds to the extent in value of twenty-five millions of dollars for road construction by the State.

From a consideration of said Section 40 and of said two amendments to the Constitution, it is my opinion that the State Highway Department can now build only one State Trunk Highway from the county seat of one County to the County seat of another county; that this must be one continuous highway connecting the two county seats by the shortest and most feasible route. This answers your first question.

In answer to your second question will state that, in my opinion, the State Highway Department is without any law to enter into a contract with any county to construct highways for said county. This being the case, it necessarily follows that said State Highway Department could not enter into contract with a contractor for such purpose. In fact, the State Highway Department, in my opinion, is without authority to construct any highway except the trunk highways connecting county seat with county seat and these roads with roads of adjoining States. This answers all the other questions.

I will add, however, that the gasoline fund apportioned to counties can be used for the purpose only of maintaining and repairing public roads, highways and bridges, in the County other than State trunk roads.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 18, 1927.

Mr. B. M. Walker,
Tax Assessor,
Ozark, Alabama.

Dear Sir:

This acknowledges receipt of your letter of November 8th, 1927. You write as follows:

"Will you please advise me whether or not I am entitled to collect my commissions on State and County Tax collected on automobiles?"

In reply will say that you are entitled to commissions on assessing the taxes on automobiles just as on any other property. The change in the law

with reference to the time and circumstances of assessment made no change with reference to commissions of assessor or collector for discharging their duties.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 18, 1927.

Hon. W. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.

Dear Governor Brandon:

This acknowledges receipt of your letter of November 10th, in regard to Act passed by the recent Legislature authorizing the court of county commissioners and city authorities to remit taxes assessed on manufacturing plants, etc., for a period of five years from the date of incorporation or organization of such factory.

In reply will say that it is the ruling of this office that this Act does not and cannot apply to the county three mill school tax or to the district three mill school tax. Such taxes are levied upon the taxable property in the county, or district, in the manner prescribed by the Constitution, and, in my opinion, must be used as prescribed by the Constitution. All other county and city taxes, in my opinion, may be remitted under said Act. It will be seen that the Act recently passed was not an amendment to any section of the Code, but an entirely new Act.

I am enclosing you a copy of the law.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

encl.

Written by Mr. Haynes, AKB
November 18, 1927.

Court of County Commissioners,
Escambia County,
Brewton, Alabama.

ATTENTION OF MR. MILLER.

Gentlemen:

I am in receipt of your letter of October 18th in which you desire an opinion from this office on the following question:

> "Can the Commissioners Court use its teams now standing idle and doing nothing and road machinery, now standing idle and doing nothing, for the next sixty (60) days by renting the outfit to the county used in one of the County Commissioners Districts of Escambia County

either to the contractor building concrete paving streets in the City of Brewton at a profit or let them in like manner to the State contractor for building concrete roads for the State out of Brewton at a profit—for the purpose of offsetting the costs and expenses incurred for feeding these mules and teams while they are standing idle and doing nothing at the expense of the county—when by using them as above indicated they would not only pay their expenses but make a profit in addition, provided of course that they are not being injured or their value materially decreased in the transaction.

"One of the County Commissioners has caught up with his work and his teams and outfit is idle and this expense would be turned into a profit if the teams could be used under the watch and care of the County Commissioner as above indicated—would any law be violated?"

I am of the opinion that you can, if you so desire, rent the outfit mentioned above to any party in the County, the proceeds to go to the Road and Bridge Fund of your County, for the sixty days which you say it will be idle. I find no law forbidding this. Under Section 3 of the Act referred to in your letter, I think you are authorized to make such contract.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:LM
November 18, 1927.

Hon. L. M. Dinsmore,
Office Engineer,
State Highway Department,
Capitol.

Dear Sir:

I have your letter of Nov. 4, 1927, with letter of Oct. 20, 1927, of H. D. Burnum, Division Engineer, enclosed. You state that during January, 1927, while the highway between Decatur and Moulton was under construction that one mile of said highway was so situated that traffic could not detour around the construction. You also state that the department instructed the contractor to station teams on this section of the road for the purpose of assisting traffic. You request that I advise you whether or not the department can pay the contractor for the above services.

H. B. 391, by Mr. Poole, which bill was approved August 23, 1927, contains the provision that the State Highway Department shall consist of three members, and contains the further provision that it shall be the duty of the department to construct, standardize, repair and maintain the roads and bridges of this State, etc. It appears from the above that the department has general authority in the construction of roads and bridges.

Section 12 (a) of the specifications for the above project is as follows:

"In conducting the work the contractor shall interfere as little as possible with public traffic over the road. He shall observe traffic regulations and shall avoid the obstruction of sidewalks, fire hydrants, etc. He shall exercise especial precautions in the storage and use of explosives; to warn away the public as well as to safeguard his employes. The contractor shall at his expense, build and maintain in good condition, short detours along the line of work, such as around culvert openings, work in progress, impassable places due to construction, etc. When temporary roads, and long detours or bridges are required, they shall be paid for as extra work unless otherwise provided in special provisions."

It is my opinion that the above Section 12 (a) requires the department and not the contractor to build and maintain detours a mile in length, provided the necessity for such detours is not caused by any fault of the contractor in the construction of the road and provided special provisions are not made which require the contractor to build and maintain detours a mile in length. What I have just said about detours a mile in length would necessarily apply in the case which you mention in your letter of November 4 to me, because **you state in your letter that said mile was so situated that traffic could not detour around the construction.**

It is my opinion that the division engineer did not have authority to bind the department for the payment of the above expense unless the department had given him authority to incur this expense. You stated to me in our conversation that such authority had been given him.

In view of the above it is my opinion that the department can pay the above expense, unless such expense was made necessary by some fault of the contractor in the construction of the road, or unless special provisions had been made requiring the contractor to provide assistance for traffic over the mile of road in question.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
November 18, 1927.

Hon. A. G. Richardson, Jr.,
Commissioner of Washington County,
Chatom, Alabama.

Dear Sir:

I have your request for an opinion construing House Bills 915 and 916. You write as follows:

"As a member of the Court of County Commissioners of Washington County, I desire an opinion on our local Road Law passed by the 1927 Legislature before we go far enough under it to place us in an embarrassing position in case of a contest.

"We have been working under a local law passed by the 1911 Legislature, our salary being fixed under Sections 5 and 7, Local Acts, 1911,

page 186, and as amended by Local Acts, 1923, on page 178, at a per diem of $3.50, with a limit of ten days, or a total of $35.00 per month.

"H. B. 916 repeals this Act, placing us under the general law at a per diem of $3.00, under Section 6771, so far as relates to compensation, effective on passage and approval I presume, as no effective date is stated.

"Under Section 2, of H. B. 915, we are raised to a straight salary of $50.00, or $15 above the limit fixed by 1911 Legislature in addition to our per diem and mileage as provided by law.

"Will H. B. 915 or 916, either or both of them, violate Section 281 of the Constitution to the extent of invalidating it?

"Will Section 12 being a repeal act violate Section 45, relating to two subjects in one law?

"Would appreciate an opinion on this as soon as convenient to you, as there is some dissatisfaction over the new law."

I advise you that H. B. 916 repealed the Act approved March 31, 1911, as amended by Act approved Sept. 14, 1923. This disposes of your first two questions.

H. B. 915 places additional duties on the members of the Court of County Commissioners and does not violate Section 281 of the Constitution as to the raise in salary for ex-officio services rendered.

City of Birmingham v. Hawkins, Tax Collector, 208 Ala. 79.
184 Ala. 283.

See opinion of the Attorney General to Probate Judge of Coffee County, November 10, 1927. Section 12 of H. B. 915 does not offend Section 45 of the Constitution.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes, AKB
November 18, 1927.

Hon. E. P. Jacobs,
Mayor,
Bridgeport, Alabama.

Dear Sir:

This office is in receipt of your letter of July 19th, which was caught in the jam of official business, has just come to light. You desire an opinion on the following matter:

"Under Section 2150—Taxes, Special Road and Bridge; Code of Alabama, 1923, one-half of all special road and bridge taxes collected by the County Board of Commissioners is to be paid to the towns in which collected. I am informed that the Jackson County Commissioners are collecting this special tax, but they refuse to turn over to the City of

Bridgeport one-half of that collected from property within the city and they do not give any reason. I am writing to ask your opinion as to the legality and constitutionality of this section and what steps the city should take to recover the taxes due us under this section. Please advise if this special tax is being collected in other counties, and if so, is it being divided according to law under the above section?"

There is no question but that the City of Bridgeport is entitled to have paid to if one-half of the State and County tax levied and collected as a special road and bridge tax on all property located within the corporate limits of the City of Bridgeport, and this money so collected and paid to it by the County can only be used for the maintenance of roads and bridges within the city limits and any amount not so used during any year should be turned over to the Court of County Commissioners or Board of Revenue and credited to the County Road and Bridge Fund.

Section 2151, Code, 1923; also, see citations in the Code under this section.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:AB
November 18, 1927.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of November 15th in which you ask to be advised as to the constitutionality of Senate Bill 179, approved August 20, 1927.

I have examined Senate Bill 179, and find that it was enacted by the Legislature and approved by the Governor, and I find no constitutional objections to same.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
November 22nd, 1927.

Mr. Joseph B. Crow,
Tax Collector,
Mobile, Alabama.

Dear Sir:

This acknowledges receipt of your letter of November 19th.

In reply will say that your County Board of Revenue and Road Commissioners were without any shadow of authority for attempting to exempt

from county taxes the property of Saenger Realty Corporation whose business is that of owning and operating a show house or theatre.

You call attention to Sections 3022 and 3023 of Code, 1923. These sections contain no such authority, and besides, they were repealed by the Revenue Act of 1923.

The Act passed by the recent Legislature, Senate Bill 149, approved February 18, 1927, reads as follows:

> "For the purpose of encouraging the building, extending and operating of factories for the spinning of thread and yarns and the knitting and weaving of cloth and other fabrics of cotton and wool in this State, and plants for the purpose of building ships, and factories for the manufacture of bags, wood pulp products, wooden cabinets, and farm implements, or any other manufactured products, the Court of County Commissioners, or other court having like jurisdiction, of any county, or the constituted authorities of any city or town in which it is proposed to locate or add or extend any such factories or plants are authorized and empowered to remit the taxes assessed on such factories and shipbuilding plants as are already built and operated, and on all buildings, works, machinery and other equipment of such factories or plants or additions thereto, or extensions thereof, and on the lands on which such buildings, plants and factories or additions to or extensions thereof are located, and also on all the capital stock of such factories and shipbuilding plants or increase of such capital stock made for the purpose of making additions thereto or extensions thereof, for all county or municipal purposes for a period not exceeding five years from the date of the incorporation or organization of such factory or shipbuilding plant, or from the date of the completion of any such additions to or extensions thereof."

It is perfectly evident that this Act applies to shipbuilding plants and to manufacturing plants only. Exemptions are strictly construed. Even if this were not the rule of law, by no stretch of the imagination could a show house or theatre be classified as a shipbuilding plant or a manufacturing plant. You should pay no attention to the action of the Board of Revenue or Road Commissioners in the premises.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
November 22, 1927.

Mr. J. W. Henson,
Sheriff, Washington County,
Chatom, Alabama.

Dear Sir:

I have your letter of November 3, 1927, in which you ask that I advise you if the court of county commissioners can pay for a telephone for a chief deputy sheriff.

I do not know of any law which authorizes the court of county commissioners to pay for a telephone for a chief deputy sheriff.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:AKB
November 22, 1927.

Mr. Winston Stewart, Treasurer,
Coosa County,
Rockford, Alabama.

Dear Sir:

I have your request for an opinion by this office as to the validity of certain warrants. You write as follows:

"I am in receipt of some Coosa County warrants of the Commissioners Court issued back in 1915 and 1917 and I would like to know if it would be in order to pay these claims.

"These warrants have been registered but owing to the loss of the register by our courthouse fire in 1925, I am at a loss as to a check up."

In reply thereto will call your attention to Section 229 of the Code:

"Claims against a county in which the records have been destroyed by fire are barred if not registered in the proper office of the County within twelve months."

These warrants should have been registered within one year after the courthouse of your county burned. And it is my opinion that you cannot pay them after a lapse of twelve months in the face of the above quoted section of the Code.

I am therefore returning the four warrants to you by registered mail.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:ML
November 22, 1927.

Hon. G. B. Baggett,
Sheriff, Winston County,
Double Springs, Alabama.

Dear Sir:

I have your request for an opinion by this office as to what fees the sheriff is entitled to for attendance upon the county court. You write as follows:

"Is it a law for the county to pay the sheriff for service done by waiting on the county court while it is in actual session? Also, is he allowed pay for his chief deputy in the same cause, and, how much they are allowed for such service?"

It is my opinion, and I so advise you that, under Section 3758 of the Code of 1923, the Sheriff is entitled to $2.00 for each day's attendance on the County Court. Of course, he is not entitled to any additional fees because his chief deputy is present also.

Reports of Attorney General 1922-24, p. 434.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
November 23, 1927.

Mr. C. F. Jeter,
License Inspector,
Luverne, Alabama.

Dear Sir:

This acknowledges receipt of your letter of November 16th. You write as follows:

> "Would thank you to inform the office of Judge of Probate of Crenshaw County, Alabama, whether or not the fifteen per cent penalty shall apply to all licenses and automobile tags after they become delinquent whether cited by the License Inspector or not and if the penalty is to be added to the license as stated, then whether or not the license inspector shall receive the 15% penalty or to what fund it shall be applied."

In reply will say that you are entitled to the 15% penalty in all cases where you have notified the judge of probate of the delinquency. This you can do before attempting to serve the citation on the delinquent. There is no presumption of law that any person is delinquent in paying the license due by him, and hence, unless you have notified the judge of probate of the delinquency, before the delinquent applies for a license, the judge of probate is under no duty to demand of the delinquent the penalty. But where you have previously notified the judge of probate of such delinquency, the judge of probate is required by law to collect the penalty of 15% in addition to the license and pay this penalty so collected over to the license inspector for his services in the premises.

Where the license inspector has notified the Judge of Probate of the delinquency and has cited the delinquent to appear and show cause why he has not paid his license, he is entitled, in addition to the 15% penalty, one dollar and fifty cents for serving the citation.

Revenue Act, 1927, Section 72.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
November 23, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

I have your request for an opinion by this office regarding the validity of a resolution by the State Highway Commission. You write as follows:

"There is on my desk a voucher of the State Highway Department.

"This voucher is for the sum of Two Thousand Dollars ($2,000.00) and the stated purpose of which is:

"Revolving Fund to be used by the Highway Department, to be deposited in the Fourth National Bank, Montgomery, Alabama, subject to check of Henry J. Law, State Highway Commissioner, as per attached copy of Minutes of State Highway Commission, attached hereto, dated Sept. 15, 1927:

" 'Minutes of the State Highway Commission are shown as follows, being attached to the voucher:

" 'Mr. Turner offered the following resolution:

" 'Whereas, In view of the increased activities of the State Highway Department, due to the working of convicts on the roads and bridges of the State, and to the establishing of numerous convict camps and camps for employes necessary in handling convicts, livestock, road machinery, etc., and it being very apparent to this Commission that it is absolutely necessary that a sufficient sum of money be made available, in the form of a revolving fund for immediate use in meeting emergency expenses;

" 'Now, Therefore, Be It Resolved, By the State Highway Commission of Alabama that a voucher be prepared by this Department in the sum of $2,000.00 and presented to the State Auditor for payment and when this sum of money is secured that it be deposited to the credit of the State Highway Department of Alabama at the Fourth National Bank, of Montgomery, Alabama, subject to the check of Henry J. Law, a member of this Commission. Be it further resolved, That receipts be taken for all expenditures from this fund and as soon as convenient thereafter, a voucher be prepared in the regular way, to cover such emergency expense, the State Treasurer's Warrant be secured and deposited to the credit of the State Highway Department in said revolving fund account at the Fourth National Bank of Montgomery.

" 'Mr. Turner moved the adoption of the resolution which was seconded by Mr. Law and on roll call was unanimously adopted.

" 'The foregoing is a true and correct copy of a resolution adopted by the State Highway Commission of Alabama September 15, 1927.

" '(Signed by) F. O. McMANUS, Secretary.'

"Will you kindly give me an opinion as to the legality of this revolving fund for the State Highway Department, following the action

of the Commission in passing this resolution; and also if the State Auditor would be authorized to issue this warrant?"

This is to advise you that, I know of no law to authorize a revolving fund for the Highway Commission. It is, therefore, my opinion that you as State Auditor would not be authorized to issue said warrant.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce, AKB
November 23, 1927.

Hon. Charles E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of October 8th, in which you state that you are enclosing a requisition from the State Board of Administration for a warrant on the State Treasurer in favor of the Washington County Board of Education for the sum of $6,177, which requisition was issued under the provisions of Act No. 371, H-673, by Jordan of Washington, which Act was approved August 26, 1927. You request that I advise you whether or not this Act is constitutional.

I find that the above Act authorizes and directs the State Board of Administration to pay out of the State Insurance Fund to the County Board of Education of Washington County, the sum of $6,177 to cover the loss sustained by the destruction of the public school building at Chatom. The Act contains the statement that such building while under construction was destroyed by fire on the first day of April, 1924, and such Act contains the further statement that the loss by fire occurred before the State Board of Administration had promulgated rules and regulations requiring county boards of education to report public school properties for insurance purposes. It is true that Section 738 of the School Code of 1924 did not require an appraisal of the State property for insurance purposes before October 1, 1924. We find, however, that Section 108 of the School Code of 1924 contains the provision that the County Boards of Education are required to insure all school buildings whose titles are vested in the State. This cannot affect the validity of the Act in question, but it is my opinion that the Act is invalid for another reason. You will observe that the title of the Act authorized payment by the State Board of Administration and the body of the Act authorizes and also directs that payment be made.

Our Supreme Court, in the case of **First National Bank of Evergreen v. Haygood, Tax Assessor,** 89 Sou. Rep. 497, held that a variance in the title

and body of the Act such as I have referred to above will render the Act void.

In view of the above, it is my opinion that H. B. 673, approved August 26, 1927, is unconstitutional and void.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

encl.

Written by Mr. Brassell:LM
November 25, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your request for an opinion by this office as to authority of the Board of Education to employ an attorney. You write as follows:

> "I have received from Hon. R. V. Allgood, Assistant Examiner of Accounts, an inquiry as to the use of General School Funds of the county for the purpose of employing a special legal adviser for the Board of Education of Tuscaloosa County. I am sending you a copy of his inquiry.
>
> "Will you please advise whether or not there is any authority to use such fund for such purpose?"

This is to advise you that I am unable to find any provision of law which would authorize the County Board of Education to employ a special legal adviser, and I am of the opinion that such employment is unauthorized by law.

I further advise you that, before public funds can be expended for any purpose, there must be some statute authorizing such expenditure.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
November 26, 1927.

Hon. W. B. Riley,
County Superintendent of Education,
Tuskegee, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of October 21, which reads as follows:

> "The term city was redefined by the last Legislature and 2,500 inhabitants are now required to make a community a City. Therefore, a com-

munity containing a fewer number of people than 2,500, according to the last U. S. Census report, has its educational affairs administered by the County Board of Education. Hence, the City of Tuskegee becomes a part of the County system of Macon County.

"During the past summer the City Board of Education of Tuskegee contracted for repairs on the school building aggregating a cost of approximately $2,300. This obligation which was created by the City Board, was not liquidated before the first of October last, when the City school by operation of the law became a county school as before stated.

"There is on file in my office an opinion rendered by you to the the effect that the County Board of Education cannot liquidate an obligation created by any one other than itself.

"This question now arises: Since the City Board of Education legally created an obligation, and since this Board became defunct by no act of its own, but by operation of the law, and since by operation of the law the County Board of Education succeeded said City Board of Education, in the administration of its affairs, can the said County Board of Education legally assume said financial obligation and settle same?"

Section 188 of the School Code of 1927 reads as follows:

"A city within the meaning of this Code shall include all incorporated municipalities of twenty-five hundred or more inhabitants, according to the last or any succeeding Federal census."

Section 190 of the School Code of 1927 reads as follows:

"Whenever the control and administration of educational matters affecting a municipality having a city board of education is transferred to or for any reason becomes vested in the county board of education, the existing indebtedness created prior to such transfer and the rights to collect the same shall in no wise be impaired."

In view of the authority contained in Section 190, quoted above, I advise you that the county board of education must assume all legal financial obligations of the city board of education, under the facts outlined in your letter.

The opinion to which you refer to in the penultimate paragraph of your letter to the effect that the city board of education cannot liquidate an obligation created by anyone other than itself is not to be confused with the instant opinion. The two opinions relate to different matters. Both opinions are in full force in their respective fields of operation.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
November 30, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of November 26th asking that we reply to letter of Mr. W. M. Hendon to you of date November 25th. The letter of Mr. Hendon is as follows:

> "Mr. W. S. Webb, Tax Collector, and myself, Tax Assessor, for Macon County, will thank you for a legal opinion from your department, relative to the assessing and collecting of the city taxes for Tuskegee, on ad valorem property in the city.
>
> "The question is whether or not we can assess the city property on the regular tax lists, and extend the taxes for same on the tax book, also whether or not we can legally put the city taxes on the tax collector's receipt with the regular state and county taxes, and as to whether or not the city taxes being written up on regular tax receipts, would in any way hinder the collection of same.
>
> "The City of Tuskegee has approached us on this matter and we do not want in any way to jeopardize the collection of state and county taxes, but unless we can assess and collect these city taxes with the State and county taxes, on the same tax receipt, we would not care to handle same."

In reply to the questions asked by the letter above copied, will say that it is our opinion that a system of commingling the assessments and collections of State and county taxes with the assessments and collections of city taxes upon the same sheet and with a single receipt would be impracticable and contrary to the whole spirit of the law. There are several provisions of the law both for State and County and for the City, which, in my opinion, is incompatible with such a procedure.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:RF
December 2, 1927.

Hon. C. E. Thomas,
Superintendent of Banks,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of October 18th. You write as follows:

> "I will thank you to construe and give me your opinion as to the meaning of House Bill No. 33, and advise if, in your opinion, it is constitutional. Copy is attached."

In reply will say that, in my opinion, House Bill No. 33, approved September 6th, is a valid and constitutional enactment; and that it means what it says. So far as is necessary here to consider, said Act reads as follows:

> "Section 1. That it shall be lawful to lend money at six per cent (6%) per annum or less and to aggregate principal and interest at the date of the loan and to divide the sum of the principal and interest for the entire period of the loan into monthly or other installments."

This act, in my opinion, is not a special, private or local law, and, hence, does not offend against Section 104 of the Constitution. In all of its parts it is perfectly consistent, plain and unequivocal. Such being the case "courts will not search for unexpressed intention, nor indulge in speculations as to possible or even probable qualifications that may have been in the mind of the Legislature."

Blake v. State ex. rel.
Going, et al. 178 Ala. 411.
Lehman Co. v. Robinson, 59 Ala. 219 to 239.

There is no inconsistency in any part of the Act. It is perfectly easy to conform to every provision. It would be judicial legislation to make it mean anything which would violate any of its provisions. To construe it to mean that interest at six per cent per annum may be contracted for upon the entire amount loaned from the date of lending to the date of the last payment, where the principal and interest added together is divided into several monthly payments, would violate the first clause of said section. Such lending would not be at six per cent per annum and hence would not be in accord with said first clause. On the other hand it is a simple proposition to aggregate the principal and interest at the date of the loan, for the entire period of the loan, divided into payments in any manner desired, without violating the first clause.

It is, therefore, my opinion that the law is perfectly valid, but that it does not permit a charge of interest exceeding six per cent per annum.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
December 3, 1927.

Mr. Willard Drake,
Assistant Solicitor,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of November 28th with reference to section 3883 of the Code. You write as follows:

> "You will observe that the punishment for a violation of this section is a fine not less than five dollars, nor more than one hundred dollars 'to

be paid in money only.' Can you direct me to any opinion construing this portion of the Section? Suppose the defendant has no money or refuses to pay it?"

In reply will say that the answer to your question is in my opinion, so plain that, I presume no one has ever seen fit to raise the question in any case appealed to the Supreme Court or Court of Appeals. There is, therefore, no opinion construing it. The statutes upon the subject is as clear as language can be written. If the defendant has no money and refuses to pay the fine, and he does not confess judgment as provided by section 5288 of the Code, then the court will proceed as provided by section 5290 of the Code.

In fact, all fines must now be paid in money unless otherwise expressly provided.—Code 1923, Section 4038. Section 3883 was, without doubt, first written when fines generally were payable in certain script; hence, the provision "to be paid in money only." The language of the section has not since been changed as there has been no necessity for changing it. The general law has been changed to accord with it.

> "When a fine is assessed against a defendant, the trial court must either imprison him in the county jail or sentence him to hard labor for the county, * * *, unless the fine and costs are paid or judgment confessed." Perry et al. v. State, 149, Ala. 43; Code, 1923, Section 5290.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:K
December 5, 1927.

Hon. T. S. Jones,
Treasurer of County School Funds,
Vernon, Lamar County, Alabama.

Dear Sir:

I have your letter of November 26, 1927, in which you ask that I advise you whether or not a member of the County Board of Education can serve as County Treasurer of School Funds.

The School Code of 1924, Sections 80 and 82, contain the provision that members of the County Board of Education shall be elected for definite terms and that they shall be paid from public funds. It is my opinion that a member of the Board of Education is a County Officer.

The School Code of 1924, Section 84, contains the provision for the selection of the treasurer of county school funds.

It is true that the county treasurer of school funds does not receive any compensation for his services. It is my opinion, however, that a member

of the County Board of Education cannot act as treasurer of county school funds without violating the provisions of the Code of 1923, Section 5024, which forbids county officers taking any contract for work or services for the county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
December 7, 1927.

Hon. Woolsey Finnell,
Highway Director,
Capitol.

Dear Sir:

I have your request for an opinion by this office for a construction of the revenue laws. You want to know if a contracting firm which is a partnership and not a corporation should pay the contractor's license.

Schedule 34 of the Revenue Code of 1923, reads as follows:

"Construction Companies or Contractors.—Any person, firm or corporation accepting orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, electric wiring, or other steel, or any other building material, or shall accept contract to do any paving or curbing on sidewalks or streets, public or private property, using asphalt, brick, stone, cement, wood, or other composition, or who shall accept an order for or contract to excavate earth, rock, or other material for foundations or any other purpose, or who shall accept an order or contract to construct any sewer of stone, brick, terra cotta, or other material, or shall accept a contract to construct highways, bridges, dams, or railroads, shall be deemed a contractor. Every contractor shall procure from the Probate Judge of the county in which he has his principal office a license to carry on the business of a contractor, provided that if such contractor has no such office in this State, then he shall procure such license from the Probate Judge of the county where the contract is to be performed. Every such contractor shall pay a license to be ascertained in the following manner: If the gross amount of all orders or contracts accepted aggregate five thousand dollars and not exceeding ten thousand dollars, he shall pay the sum of ten dollars; if the amount of such orders or contracts is more than ten thousand dollars and does not exceed twenty thousand dollars, fifteen dollars; if the amount of such orders or contracts exceeds twenty thousand dollars and does not exceed fifty thousand dollars, twenty-five dollars; if the amount of such orders or contracts exceeds fifty thousand dollars and does not exceed one hundred thousand dollars, fifty dollars; if the amount of such orders or contracts exceed one hundred thousand dollars and does not exceed one hundred

and fifty thousand dollars, one hundred and fifty dollars; if the amount of such orders or contracts exceeds one hundred and fifty thousand dollars, and does not exceed two hundred thousand dollars, two hundred dollars; if the amount of such orders or contracts exceeds two hundred thousand dollars, two hundred and fifty dollars; and when such contractor shall have obtained a license for any year for which he has paid a license tax of less than the maximum above prescribed he shall not accept any contract or contracts during each year, the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license. The payment of the license in one county in the State, as evidenced by the license or official certificate of the Probate Judge, shall be sufficient."

It is my opinion and I so advise you that, persons engaged in the business as a contractor will have to pay the license as provided in the above cited section of the Revenue Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to:
B. G. Wilson,
Demopolis, Ala.

Written by Judge Evans:ML
December 7, 1927.

Hon. Woolsey Finnell,
Alabama Highway Director,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of this date. You write as follows:

"This department has made arrangements with several banks of the State to handle for the department the pay warrants due maintenance employes and the employes in convict camps. This courtesy extended the Highway Department by the banks is a great help to us in handling these pay vouchers.

"We are advised by the Abbeville State Bank, under date of December 6th, that several of the checks due employes which were sent to them for delivery have been held up on account of garnishment. These checks or warrants are signed by the State Auditor and made payable to the employe and are merely sent to the bank for delivery and are not deposited in the bank for credit of the employes.

"I will thank you to advise me, if under the law, a warrant sent to the bank as above stated, can be stopped by garnishment proceedings, and if it is the duty of the bank to hold the warrant subject to the garnishment, or deliver the check to the employe as requested by this Department?"

In reply will say that it is my opinion that the bank is not subject to garnishment under the circumstances named by you. If the warrant were delivered into court, the court would be as powerless to deal with it as the creditor would be powerless to garnish the officer of the state who is required by law to pay the warrant, without the consent of such officer.

Of course, if the employe should deposit the warrant with the bank for collection, then in my opinion, garnishment against the bank would lie.

In the case named by you, the bank is acting for the State Highway Department for a particular purpose, viz.: the delivery of the warrant.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:LM
December 7, 1927.

Hon. W. H. Cantrell,
Judge of Probate,
Hamilton, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of December 5th, in which you ask to be advised as to the enforcement of the vagrancy law with reference to young girls and women who you state are sometimes brought into your court by the Law Enforcement Department.

I beg to call your attention to Chapter 244 of the Code of 1923 which defines vagrancy in this State. I also particularly call your attention to Section 5572 of the Code, which is as follows:

"Vagrancy, a crime, penalty and punishment for. Vagrancy is a crime and any person convicted thereof must be fined not more than five hundred dollars, and may also be sentenced to hard labor for the county for not more than twelve months."

In the cases of those persons who are under the age of sixteen you will deal with them as a juvenile court as provided in the Code. In other cases whether old women, young women or men, you will have to try them according to the evidence and in the event they are convicted, you should impose the punishment provided for in Section 5572 of the Code, and they should be sentenced as in other criminal cases.

Trusting that this answers your inquiry, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
December 8, 1927.

Hon. John W. Browder,
Superintendent of Education,
Center, Alabama.

Dear Sir:

I have your letter of December 2, 1927, in which you refer to my opinion of October 24, 1927, to Hon. Irby A. Keener, in which it was held that a member of the County Board of Education cannot legally serve as an attendance officer. You state in your letter that a member of the County Board of Education in your county is serving as attendance officer. You request that I advise you if you can pay him for his services as such attendance officer.

It is my opinion that since the member of the Board of Education which you mention cannot legally serve as attendance officer that you cannot pay him for such services and if you do pay him that any sum paid to him should be charged back to you.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
December 9, 1927.

Mrs. Mae Amiss Ashmore,
Clerk of the Circuit Court,
Jasper, Alabama.

Dear Madam:

I beg to acknowledge receipt of your letter of December 6, which is as follows:

> "One Lonnie Williams was convicted, and sentenced for fine and costs, from which he appealed. He wants to withdraw his appeal, but the transcript has been sent up to the Court of Appeals, but he doesn't want to pay the cost of the transcript. I would appreciate your telling me, if he could withdraw the appeal and pay me the cost and should I collect the amount of the transcript cost or who should pay this cost?
>
> "In cases where city appeal cases are dismissed in the Circuit Court, who is liable for the cost. Is it possible to force the collection of this cost, or would it be illegal for the city to pay same?"

In reply to your inquiry as to the dismissal of an appeal, and the payment of the cost of the transcript, I advise you that the appeal can be dismissed upon notice being given to such effect, and upon payment by appellant for the making of the transcript. Such payment should be made to the Clerk of the Circuit Court. Execution should be issued against the appellant for the payment of this cost.

In the event that the execution is returned "no property found," payment should be made from the Fine and Forfeiture Fund, provided, there is

a surplus of such fund arising from fines and forfeitures in the county treasury of any county over and above the sum required to pay the registered claims of state witnesses. The foregoing is in compliance with an act approved February 18, 1927, amending Section 4039 of the Code of 1923.

In reply to the second paragraph of your letter, I advise you that where city appeal cases are dismissed in the circuit court, and where the city is unsuccessful in its appeal, the municipality is not liable for the payment of costs in such cases. This is held in the following cases:

City Council of Montgomery v. Foster, 54 Ala. 62;
Town of Camden v. Block, 65 Ala. 241;
City of Selma v. Stewart, 67 Ala. 341;
Northern v. Hamners, 121 Ala. 589; 25 So. 817.

Also to like effect, see opinion of Attorney General of June 25, 1927, to Hon. R. L. Richardson, Clerk of the Circuit Court, Gadsden, Alabama.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
December 9, 1927.

Hon. D. B. Borden,
Judge of Probate, Hale County,
Greensboro, Alabama.

Dear Sir:

I have your letter of December 3, 1927, in which you state that the First National Bank of Greensboro is the depository for the funds of Hale County. You also state that the bank has presented a bill to you for certain books which are to be used to keep accounts of the county's funds. You request that I advise you if the county can pay for these books.

The Code of 1923, Section 320, contains the provision that the bank or banks acting as county depositories shall not receive any compensation or commission or other allowance for services as county depositories, etc.

I do not know of any law which authorizes the payment of the above claim.

In view of the above it is my opinion that the county cannot pay for books used by the county depository in handling county funds.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
December 12, 1927.

Hon. Bibb Graves,
Governor of Alabama,
Capitol.

Sir:

I acknowledge receipt of the letter of your Secretary, Hon. John S. Tilley, dated December 3rd, which reads as follows:

"I am instructed by Governor Graves to refer to you the enclosed letter from Honorable William T. Seibels, Solicitor of Montgomery County.

"It is the desire of the Governor to comply with Mr. Seibels' request, provided the law permits him to do so.

"The Governor would appreciate your giving this matter your consideration, and advising him in the premises."

The letter enclosed reads as follows:

"Amos Provo was convicted in the Montgomery Circuit Court, November 25, 1925, and sentenced to serve 8-9 years in the penitentiary, on a charge of embezzlement, having stolen the funds of a lodge of which he was treasurer.

"Provo escaped, fled the county, and was apprehended in Cincinnati, Ohio. Tom Taylor, one of the interested parties, a member of the lodge affected, in order to bring Provo to trial, advanced and put up Eighty-five Dollars, to send up to Cincinnati, and bring Provo back. I agreed with Tom Taylor that if Provo was convicted I would ask the State to reimburse him that matter of expense, which I regarded as a just debt on the part of the State; but did not at the time wish to take chances on failure to convict.

"Inasmuch as conviction was had, I regard this a true and honest debt of the State, and am asking that you have the matter reimbursed to Tom Taylor."

Section 17 of an Act entitled "An Act to Make Appropriations for the Ordinary Expenses of the Executive and Judicial Departments of the State and for Interest on Public Debt," which Act was approved September 7, 1927, and became operative October 1, 1927, provides under sub-Section 19 as follows:

"For the removal of prisoners, Seventy-five Hundred Dollars ($7,-500.00) for every year."

In view of the above appropriation it is my opinion, and I so advise, that the item outlined in Solicitor Seibels' letter would be a proper charge against the appropriation above named and payment should be made to the agent who was designated by the Governor as the person to return the fugi-

tive to the State. The Executive commission to such agent should be presented to the Auditor, together with a certificate from the Circuit Clerk of Montgomery County, certifying to the fact that the said Amos Provo was duly convicted and sentenced.

Respectfully,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
December 12, 1927.

Hon. John Bottger, Jr.,
Hon. J. F. Cogdell,
Assistant Examiners of Accounts,
Capitol.

Gentlemen:

I acknowledge receipt of your letter of December 12th, which reads as follows:

"We quote below letter received today from the Pacific Mutual Life Insurance Company:

" 'We have your letter of November 30th, accompanied by a statement of premium taxes and fees for the years 1922 through 1926, such statement having been prepared for the purpose of showing a balance due by reason of the fact that the Alabama Insurance Superintendent has not applied the retaliatory provision for the years mentioned.

" 'This matter has been given our careful attention and the following is offered for your consideration:

" 'In a list secured from the California Insurance Department, we find no Alabama company licensed to transact business in California. It would appear to us, therefore, that the retaliatory law would not be applicable to our company.

" 'The spirit of reciprocal taxation as generally applied is that there must be some Alabama life or accident insurance company doing business in California before the retaliatory provision of Section 8363 of the Code becomes operative. This is borne out by the letter from your Attorney General, a copy of which was enclosed with your favor of November 30th, wherein he states that the Insurance Superintendent of the State of Alabama must impose upon corporations organized under the laws of another state, doing business in Alabama, burdens equivalent to those imposed by such other state upon corporations organized under the laws of the State of Alabama doing an insurance business in such other state. . .'

" 'We feel that you will wish to reconsider the situation from this viewpoint.'

"This letter is in reply to letter of Mr. Cogdell of November 30th, copy of which is enclosed.

"Kindly let us have opinion as to whether or not Section 8363 of the Code applies only where a company organized under the laws of

the state applying the retaliatory law is licensed in the state where the company is organized that claim is being made upon. In other words, is it necessary for an Alabama company to be actively engaged in business in the State of California in order for the State of Alabama to apply the retaliatory law on a California company operating in Alabama?"

An answer to this inquiry calls for a construction of Section 8363 of the Code of 1923. This section reads as follows:

"Deposits, charges, and payments required by other states of insurances companies of this state, also required of insurance companies of such state.—Whenever the existing or future laws of any other state of the United States shall require of the insurance companies incorporated by, or organized under, the laws of this state, or the agents thereof, any deposit of securities in such state for the protection of policy holders, or otherwise, greater than the amount required for similar purposes, from similar companies of other states by the then existing laws of this state, then in every such case, all companies of such states establishing or having heretofore established an agency or agencies in this state, shall make the same deposit for a like purpose with the treasurer of the state, and shall pay into the treasury of this state the **taxes, fines, penalties, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed by the law of such state upon companies of this state and the agents thereof."**

It is my opinion, and I so advise, that, in order for the license fees, taxes, fines, or penalties to be due the State of Alabama, by any insurance company or corporation doing business therein, it is not a prerequisite that an Alabama company be engaged in business in the home State of such company or corporation for the retaliatory insurance laws to be operative. If the statute of California expressly exempts insurance companies of Alabama from the payment of any license fee or tax, then California companies, under our retaliatory insurance law quoted above would be exempt. I am unable to find such exemption in the laws of California. I, therefore, advise you that California companies are due the State of Alabama, when they transact business therein, such taxes and license fees as an Alabama insurance company would be due the State of California, under the California statutes, were it to engage in the business in California.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
December 13, 1927.

Hon. Hunter Armstrong,
Register of Circuit Court,
Birmingham, Alabama.

Dear Sir:

I have your request for an opinion by this office wherein you write as follows:

"In case a mistake should be made in the motor number of an automobile in a bill of complaint filed by the State to condemn an automobile under the prohibition law in this Court, notice is given and published, and later the mistake in this motor number is discovered, can this be cured by an amendment filed by the solicitor without again having this notice advertised for three weeks as required by law? Should an automobile under a certain number be advertised for sale and on the sale date it should appear that an error had been made in this motor number when the bill of complaint was filed, what are the duties of the Register or the officer making the sale in respect thereto?"

The authority of the condemnation is found in Section 4778 of the Code of 1923, and is highly penal.

It is my opinion that unless the respondent or claimant consents to the amendment, you will have to re-advertise and give the correct motor numbers.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn, AKB
December 13, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol:

Dear Sir:

I acknowledge receipt of your letter of December 12th, which reads as follows:

"Please refer to an Act approved August 13, 1927 (House Bill 351, Mr. Kirkpatrick), and advise whether or not this Act is constitutional and whether the Auditor is legally authorized in drawing his warrant for such amounts as requisitions are made for by the State Health Officer upon the appropriation provided for in this Act."

The Act to which you refer, reads as follows:

"TO PROVIDE FOR THE INSPECTION OF DAIRY FARMS AND MILK PLANTS, AND FOR THE GRADING OF THE MILK AND CREAM OUTPUT OF SUCH ESTABLISHMENTS.—

"Be it enacted by the Legislature of Alabama:

"Section 1. The sum of Twenty Thousand Dollars, or such part thereof as may be necessary, is hereby appropriated annually for the expenditure by the State Board of Health in inspecting dairy farms, milk cooling stations, milk processing plants, and creameries, and for grading the milk and cream output of such establishments.

"Section 2. The said inspections shall be made in accordance with the rules and regulations of the State Board of Health, and the grading of the milk and milk products shall be carried out in compliance with the specifications of the United States Public Health Service Standard Milk Ordinance.

"Section 3. Said sum of money having been appropriated shall be paid in monthly installments to the State Health Officer on his requisition approved by the Governor and through warrants by the Auditor on the State Treasurer."

Section 45 of the Constitution contains the following provision, inter alia:

"Each law shall contain but one subject, which shall clearly be expressed in its title, etc."

If the Act here considered is not repugnant to this section of the Constitution, it is valid. If it is repugnant to said section, it is unconstitutional, and, therefore, void. There is no question of the right of the Legislature to enact a law on the subject treated in the Act.

Courts give to words and phrases their accustomed and ordinary meaning. The Act here considered carries an appropriation, and the only notice of such appears in the title in the words, "To provide." Does the expression "To provide" clearly express the idea of an appropriation? In the opinion of the writer, it does. To provide, according to Webster's International Dictionary, means to supply, to afford, to contribute, to furnish, to stipulate, to prepare, to make ready for future use.

In view of the foregoing, I advise you that said Act, in my opinion, is constitutional and the Auditor is legally authorized to draw his warrant in compliance with said Act.

The copy of a form of requisition to be made by the State Health Officer, which you kindly enclose, and which appears to be in due and legal form, is herewith returned.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

encl.

Written by Mr. Brassell:LM
December 13, 1927.

Hon. John D. Petree,
Judge of Probate,
Russellville, Alabama.

Dear Sir:

I beg to acknowledge receipt of your inquiry of December 10th. You request an opinion on the following:

"Under Act of the Legislature approved August 20, 1927, the Board of Registrars meet between October 1st and December 31, 1927, for the registration of voters and must give notice of the time and places of registration by posting notices in each beat and by publication in some newspaper, etc. The same section further provides that 'The Board of Registrars in each county shall meet at the courthouse on the fourth Monday in January, 1928, and each two years thereafter and shall remain in session ten working days for the registration of voters.' Please advise me if notice of this meeting is required by publication in a newspaper. This same law under Section 393, with reference to persons stricken from the list provides that persons cited should appear before the said board on the second Monday in February and show cause why his or her name should not be stricken from the list. Please advise me how long the board will be permitted to serve for this last mentioned hearing."

Section 393, Code of 1923, as amended by an Act approved August 20, 1927, Acts, 1927, page 274, is plain. I am of the opinion that the Board of Registrars when meeting to purge the list of voters under Section 393 is limited to one week.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans, AKB
December 13, 1927.

Hon. George H. Thigpen,
Superintendent of Insurance,
Capitol.

Dear Sir:

I received copy of letter written by Mr. John Darrouzet to Mr. John Bottger, Jr., of November 17th, 1927, with reference to our reciprocal insurance statute. He states: "You will enclosed find a photographic copy of letter sent me by the Texas Department, showing that your companies, domiciled in your State, are paying but two cents, the same that we have been paying in Alabama." It fails to state that the insurance companies had complied with the provisions of the Texas statute, which the Legislators of Texas regarded as the equivalent of paying another one cent.

Since we have no provision for equivalents, we must, in my opinion, treat the doing of the equivalent by the Alabama companies, doing business

in Texas, in the same manner as was evidently intended by the Texas Legislature, viz.: that the investment and deposit made by the Alabama companies should be counted as one cent, which added to the two cents paid in cash, must be considered as a charge of three per cent upon gross premiums.

It is, therefore, my opinion that in applying our reciprocal statute, the Texas tax must be considered as three per cent on gross premiums, without regard to alternative allowances regarded as the equivalent of one per cent.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:LM
December 15, 1927.

Hon. R. A. Galloway,
Sheriff, Pike County,
Troy, Alabama.

Dear Sir:

I have your letter of December 13th in which you request an opinion upon the following matters. You write as follows:

> "Will you please advise me if I am allowed a seizing fee in a whiskey case where I get two quarts of liquor, and also what mileage am I allowed?"

Cost in a criminal case is penal in its nature and before any charge or item of cost can be made or allowed, the officer requesting same must be able to point to some direct statute authorizing it.

Section 4654 of the Code of 1923 regulates and stipulates what the sheriffs are entitled to for seizure of contraband liquors, but no mileage is allowed. This section reads as follows:

> "When an officer arrests any person in possession of an unlawful quantity or quantities of prohibited liquors, or of such liquors under conditions prohibited by law, then on the conviction of such party of a violation of a city ordinance or state law, whether in the recorder's court, or state court possessing jurisdiction, a fee for making the seizure of the liquors shall be taxed up against the defendant and paid to such officer as a part of the cost of the case as follows: If a seizure is made of not **less than one gallon**, nor more than five gallons of such liquors, the fee shall be three dollars; if the seizure be of more than five gallons and less than twenty gallons, the fee shall be five dollars; and if more than twenty gallons be seized, the fee shall be ten dollars."

I therefore hold that no charge can be made for the seizure of the two quarts stipulated in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Note: This opinion is based on the supposition that no conviction was had. Section 4654, supra.

C. McC.

Written by Mr. Brassell:LM
December 15, 1927.

Hon. S. H. Smith,
Clerk of the Circuit Court,
Mobile, Alabama.

Dear Sir:

I have your request for an opinion by this office, in which you write as follows:

> "I respectfully request your opinion on the question as to whether or not the fine goes to the State in cases charging recklessly operating an automobile upon a public highway or cases charging operating an automobile upon a public highway while in an intoxicated condition where the prosecution was begun **before** the new highway laws went into effect, but conviction is not had until after the adoption of the new law."

It is my opinion that, where the offense charged was committed and prosecution instituted prior to approval of the act providing for a Highway Code, the fines upon conviction are regulated and paid as provided by Chapter 226 of the Code of 1923. However, the Highway Code would apply to the offenses committed after its adoption.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:AKB
December 16, 1927.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This will acknowledge receipt of your inquiry of the 10th instant. You wish to know whether or not the fees for increasing capital stock of a corporation under Sections 6969 and 6973 of the Code of Alabama, 1923, can in any case be less than $5.00.

This is to advise you that Sections 6969 and 6972 of the Code, are to be construed in **pari materi.**

You will observe that under Section 6969, it is mandatory upon every corporation at the time a certificate is filed in the office of the Probate Judge, to pay to such Judge, for the use of the State, one dollar for every one thousand dollars of the proposed capital stock, **but in no case less than five dollars.**

Report of the Attorney General, 1920-22, page 417.

By Section 6972 of the Code, before the articles increasing the capital stock of any corporation is filed in the office of the Judge of Probate, a charter fee of one dollar for each one thousand dollars of the proposed increase in capital stock must be paid to the Judge of Probate for the use of the State, but in no case, **shall the fees under Section 6972, providing for an increase in capital stock be less than five dollars as is provided by Section 6969 of the Code.**

Report of the Attorney General, 1918-20, page 242.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K.
December 16, 1927.

Hon. C. J. Rollins,
Sheriff, Houston County,
Dothan, Alabama.

Dear Sir:

Your letter of December 13th has been received. You make inquiry and ask an opinion of this office on the following matter:

"(1) Whether a game warden has authority to make arrests under warrants sworn out by him where the offense is not committed in his presence.

"(2) Whether he has authority to approve appearance bonds.

"(3 To what fees that would otherwise go to the sheriff is he entitled?"

You will find that Section 673 of the game and fish laws (Pamphlet Edition) defines the duties and powers of the Commissioner of Game and Fisheries and his deputies. This section reads as follows:

"Commissioner and his wardens, deputies and agents may serve process.—The Commissioner of Game and Fisheries and his deputies, wardens or agents, may serve criminal process as sheriffs and constables."

It is plain from the above that such wardens are given all the power to serve and execute in criminal proceedings all processes which are delegated to the sheriffs of the State and this of course would carry with it the right to make a return therein.

Section 25 of the game and fish laws of the State (Pamphlet Edition) provides that where an arrest is made by a warden for any violation of the game and fish laws the same fees are allowed him as are allowed sheriffs and constables for similar services. This section reads as follows:

> "Cost of prosecution; how taxed.—When an arrest for a violation of the game law is made by the Commissioner of Game and Fisheries or by any warden, and the defendant is convicted, there shall be taxed, as costs in favor of such warden making the arrest, the same fee as a constable is entitled to in misdemeanor cases, and if collected from the defendant, shall be paid over to such warden, and shall be his personal perquisite. No fee shall be allowed in cases of acquittal."

From the above it is my opinion and I hold that the game wardens of the various counties of the State when acting in that capacity under the section set forth above are entitled to the fees in all criminal matters pertaining to the game and fish laws as his personal perquisite.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
December 16, 1927.

Hon. E. W. Long,
Judge of Probate,
Jasper, Alabama.

Dear Sir:

I have your request for an opinion by this office wherein you write as follows:

> "When County courts were established certain fees were provided for the judge of said court as pay for his services. Since they were placed on salaries instead of these fees the law provides that all fees provided for the judge should be paid into county treasury. This being true why would not the county be entitled to a claim against the fine and forfeiture fund for all such fees in which the defendant was acquitted, insolvent or the case nol prossed?"

In answering your inquiry I desire to call to your attention to Sections 3801 and 3802 of the Code, which provide, first for the official oath of the Probate Judge in reporting to the court of county commissioners the fees he has earned as Judge of the County Court. And second: Section 3802 provides a salary in lieu of fees.

Under Section 3758 of the Code of 1923, the fees taxed for services performed by the judge of the County Court belong to the county, and shall be paid when collected into the county treasury.

I know of no statute authorizing the payment of the fees of Judge of the County Court from the fine and forfeiture fund when the defendant is acquitted or the case is nol prossed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:ML
December 20, 1927.

Hon. W. M. Vaughan,
Judge of Probate, Dallas County,
Selma, Alabama.
Dear Sir:

I have your letter of November 22, 1927. You write as follows:

"Please advise me as to whether the license inspector is entitled to his fees or penalties in the case of a man who takes out a license on a car or bus, but who is issued an improper tag. He buys his tag thinking, as he has a right to, that he has been issued the proper tag. The license inspector cites him and demands a penalty.

"Under the statute it appears to me that penalties are imposed where the party has not secured a license."

In reply will say that a party operating a car or bus is operating without a license unless he has the license required by law for operating such a car or bus. It is among the duties of the license inspector to look out for just such cases and cite them for a license.

I know of no excuse that will relieve such a delinquent from taking out a proper license and paying the penalty provided by law, as he is conclusively presumed to know the law. Doubtless, there are cases which should appeal to the generosity of the license inspector; but such cases are for him to decide.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
December 21, 1927.

Hon. J. Harvey Estes,
Board of Registrars, Walker County,
Jasper, Alabama.
Dear Sir:

I have your request for an opinion by this office as to the number of days the Board of Registrars are to remain in session. You write as follows:

"I was recently appointed to a place on the Walker County Board

of Registrars. The retiring board had fixed the dates for visiting the various precincts of the county and had consumed 25 days of the 30 days allowed us to visit all the precincts, leaving 11 days to finish the work for the year.

"We, the new board, are filling the appointments made by them and will not be paid for 6 days of this time unless some provision can be made. The retiring board are drawing pay for time served. Please advise me what may be done. The new law, regulating our work, only gives us 30 days, whereas before it was 40 days."

Section 375 of the Code as amended by Act approved August 20, 1927, reads in part as follows:

"The time consumed by the board in completing such registration **shall not exceed thirty working days in any county,** except in counties having more than one hundred and fifty thousand population * * *."

It is my opinion and I so advise you that the Board of Registrars in your county cannot exceed thirty days in completing the registration of voters.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
December 21, 1927.

State Tax Commission,
Capitol.

Dear Sirs:

This acknowledges receipt of your letter of November 17th, enclosing letter from Blossburg Mining Company to Hon. Jno. D. McNeel, Chairman, of date October 5th. The last mentioned letter is as follows:

"Received your letter of October 1, 1927, regarding tonnage tax on coal. I noticed that I have paid tax on wagon mines coal which I was not entitled to pay during the years 1925-26-27, amounting to 7,444 tons @ 2c—$148.88, which I am entitled to receive credit for."

In reply will say that if the statement made is correct and the mine in question was a "wagon mine", then said company should present his case to the next meeting of the Legislature for a refund, as we have no provision of law for paying this money back; and, in my judgment, no credit could be given on a subsequent settlement. The money in question has been paid into the State Treasury and since there is no law for paying it back, the Legislature only can deal with it.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
December 21, 1927.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of December 8th. You write as follows:

> "Would a person who has taken out license in April, 1927, for closing out sale under Schedule 51, page 411, Acts of 1919, be required to take out license for 1928, if the sale had not been completed. Suppose this person should replenish his stock, would he then be liable for 1928 license?"

In reply will say that Schedule 51 of Section 361 of the Revenue Act, 1919, provides for a license to sell a particular lot of goods fully described and identified in the application for license. When he has taken out the license to sell the goods and merchandise described, he needs no further license to sell these goods under the provisions of said Schedule 51. If he wishes to sell other goods or merchandise under said advertisement, he must make application and pay license in same manner as at first. It is, in my opinion, unlawful to sell under such a license any goods not described and identified in the application. The license, in my opinion, should be to sell the goods, wares, merchandise or other property, described and identified in the application. When one sells, under such advertisement, any other property than that described in the application, he is doing business without a license, and is subject to prosecution.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
December 22, 1927.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of December 14th, with regard to payment of commissions to the tax collector of Mobile County for taxes on lands bid in by the State and to the Tax Assessor of Mobile County for taxes on lands bid in by the State.

In reply will say that, in my opinion, neither of these claims are valid; that tax collectors and tax assessors are not entitled to commissions on lands bid in by the State.

I am herewith returning the three petitions filed for said purposes.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:ML
December 23, 1927.

Mr. J. J. Tolbert,
Tax Collector,
Fort Payne, Alabama.

Dear Sir:

This acknowledges receipt of your letter of December 6th. You write as follows:

> "Pease advise if the Tax Collector of DeKalb County is entitled to a collector's fee on automobile's that are delinquent. As you know they are delinquent after November 15th.
>
> "I have noticed that the Tax Assessor is collecting a fee on these automobiles of (50) fifty cents each."

In reply will say that, so far as the Tax Assessor and Tax Collector are concerned, there is no such thing as a delinquent tax on motor vehicles, and any fee collected by either for delinquency is illegally collected; no duty is required of either with reference to such delinquency. The car owner is required to have the tax assessed and to pay the tax as assessed before he can get a license. The assessor and collector have nothing to do with reference to th delinquency. So far as either of them is concerned, the car owner is never delinquent.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell
Dec. 28, 1927

Hon. E. W. Long,
Judge of Probate of Walker County,
Jasper, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of the 23rd inst. You want to know if the solicitor's fees can be paid from the fine and forfeiture fund in cases where executions have been returned "no property found," and if the general fund of the county is entitled to be reimbursed from the fine and forfeiture fund for solicitor's fees in cases nol prossed.

This is to advise you that, the fine and forfeiture fund is under the control of the State, and may be disposed of as it sees fit.

Sanders vs. Elmore County, 23 So. 788.

The solicitor's fees are to be taxed as a part of costs in each criminal case in all inferior courts and paid into the general fund of the county in compliance with Section 5512 of the Code of 1923, which reads as follows:

"For every conviction of a misdemeanor in the county courts or inferior courts there shall be taxed and collected as a part of the costs and paid into the county treaury the same solicitor's fees provided for convictions in such cases in the circuit court; and said fees shall be placed in the solicitor's fund of such county by the treasurer of said county; and on appeal in the circuit court, the same shall be taxed as a part of the costs in addition to the solicitor's fee taxed for such conviction in the circuit court, and the solicitor's fee previously taxed in the county court or inferior court, shall be paid, when collected, into the county treasury, and placed in the solicitor's fund of such county by the treasurer of said County."

All solicitor's fees earned in the Circuit court should be paid into the State Tresaury and all solicitor's fees in inferior courts should be paid into the county treasury. Opinions Attorney General 1918-1920, page 653.

This opinion does not conflict with the opinion of the Attorney General cited by you. Reports of Attorney General 1924-1926, page 131.

I therefore adhere to the former opinions on this subject.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
Dec. 29, 1927

Dr. S. W. Welch,
State Health Officer,
Capitol.

Dear Sir:

I acknowledge receipt of your letter of December 28, which contains the following inquiry:

"Please advise me if a county that has exceeded its constitutional limit of bonded indebtedness can make an appropriation for health work."

Section 224 of the Constitution reads as follows:

"No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein; provided, this limitation shall not affect any existing indebtedness in excess of such three and one-half per centum, which has already been created or authorized by existing law to be created; provided, that any county which has already incurred a debt exceeding three and one-half per centum of the assessed value of the property therein, shall be authorized to incur an indbtedness of one and a

half per centum of the assessed value of such property in addition to the debt already existing. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created."

In view of the foregoing section, I advise you that any increased indebtedness not in conformity with said section would be unconstitutional. You will note that said section makes no distinction between bonded indebtedness and other idebtedness. You are therefore advised that if a county has exceeded its constitutional limit of indebtedness it cannot legally incur other indebtedness.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB:K
December 29, 1927.

Hon. Pat M. Dannelly,
Judge of Probate, Wilcox County,
Camden, Alabama.

Dear Sir:

This will acknowledge a request for an opinion by this office through Mr. Jno. Miller, of December 27th. You want to know if a license is required of retail radio dealers.

This is to advise that there is no license required of radio dealers.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
December 30, 1927.

Hon. John Brandon,
Secretary of State,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of December 22nd. You write as follows:

"I have been requested to submit to you, for your opinion, the question of the liability of state banks for the payment of the permit fee levied on all domestic corporations under the provisions of Section 43 of the Revenue Act of 1927, in view of that part of Section 6287 of the Code of 1923 relating to the assessment of banks which is as follows, to-wit:

"No other assessment or license of any kind shall be levied against or collected from any bank or banking institution, except the ordinary taxes against property in general, * * * etc."

In reply will say that, in my opinion the permit fee required by section 43 of the Revenue Act, 1927, applies to State banks, since no such exception is provided for by the Act. Section 6287 of the Code could not control future legislation.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
January 3, 1928.

State Tax Commission,
Capitol.

Attention: Mr. J. S. Mooring.

Dear Sir:

This acknowledges receipt of your letter of December 30th. You write as follows:

> "The question involved is whether when a compress license has been taken out, there must also be taken out a cotton storage warehouse license under the following conditions:
>
> "1. When only such cotton is stored as is expected to be compressed.
>
> "2. When cotton is stored generally as a business whether to be compressed or not.
>
> "3. Whether this rule would prevail when the cotton warehouse is separated entirely from the compress warehouse."

In reply will say that it is my opinion that in all cases where a charge is made for storage a warehouse license should be paid.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
January 4, 1928.

General F. E. Butler,
Adjutant General,
Capitol.

Dear Sir:

This will acknowledge your request for an opinion by this office on the following state of facts submitted by you.

> "Will you kindly render me an opinion as to the possibility of the State Armory Commission giving notes on property invested in the name of the State Armory Commission?
>
> "We are contemplating the erection of an armory, approximate cost about $10,000.00, the Armory Commission furnishing in cash one-half

the amount, plus the land upon which the building is to be erected, the remainder to be borrowed in the name of State Armory Commission. The Armory Commission expects to pay this loan and interest from funds allocated by the State, which amounts to $150.00 to $750.00 per quarter, calling your attention to Senate Bill 320, by James, Sec. 47."

In answering your inquiry I wish to call your attention to subdivisions three and four of Senate Bill 320, Acts 1927, page 582, which reads as follows:

"Purchase of Building, etc. Under such conditions as may be prescribed by the State Armory Commission, each Company, Troop, Battery, or similar unit, of the Alabama National Guard and each such similar unit of the Naval Militia of Alabama, or any two or more of such units as may be located in the same town or city, shall have the right, power and authority to purchase a building or buildings; or to purchase a suitable lot and to construct thereon a building or buildings, any or all of which shall be suitable for use as an Armory, as a storage place for military property issued by the Federal Government to each of such units, or to serve as stables for the proper care of animals actually in the possession of any such unit; and to purchase suitable acreage where necessary for use as a grazing field for animals, as a flying field, or as an outdoor drill field or target range."

"Funds for Obtaining Armories, etc. All funds required to be expended under the provisions of this article may be taken from any unexpended balance in the Company, troop, or Battery Fund; or from any monies which any unit of the Alabama National Guard may procure by voluntary contribution or gift from any county, municipality, citizen or citizens; or from any other legal source. Any expenditure from funds so procured shall first be approved by the State Armory Commission."

This is to advise you that, I can find no authority in the quoted Act which authorizes the State Armory Commission to borrow money for the purposes named in your communication.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 4, 1928.

Hon. D. G. Roach,
Judge of Probate, Geneva County,
Geneva, Alabama.

Dear Sir:

This will acknowledge receipt of your request for an opinion by this office. You write as follows:

"Will you please advise me if a person reaching the age of forty-five years on the first day of October, 1927, is due a poll tax for the year 1927?"

You will observe that, since the fixation of a poll tax the time of the accrual of the same and for the payment thereof as a condition to vote, as well as all exemptions therefrom, are provided for and regulated by Section 194 of the Constitution of 1901. The Constitution levies the poll tax according to the age at the time the tax is declared to be due, viz; on the first day of October of each year, and the Legislature has no power to change the operation of Section 194 supra.

Under the holdings in the case of Frost v. State, 153 Ala. 654, one who was forty-five years of age on the first day of October and not over that age had to pay the tax. However, that case has been overruled.

In the case of Graves v. Eubanks, 205 Ala. 176, the court said:

"That Section 194 of the Constitution fixes a tax on certain ones and not an exemption!"

I am of the opinion that if a person becomes forty-five years of age on the first day of October, he is not liable for the poll tax.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 5, 1927.

Mr. W. O. Brownfield,
Clerk Circuit Court,
Opelika, Ala.

Dear Sir:

Further answering your request for an opinion by this office as to sheriff's fees in liquor cases, I beg to advise you that Section 4788 of the Code, applies in felony cases, and he must have a certificate from the trial judge stating that he is entitled to the fees provided therein. And the fees are then payable by the State Board of Administration.

See Report of Attorney General 1918-20 pages 334 and 382.

Section 4789 of the Code provides for cases in which the defendant is sentenced to hard labor for the county, and the fees are paid out of the county treasury upon certificate by the trial judge.

Section 4768 provides allowance for officers attending and prosecuting condemnation proceedings, and the fees provided by this section shall be taxed and paid as in criminal prosecutions in which the State fails upon the court or judge making an order to that effect.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Jan. 6, 1928.

Hon. George H. Thigpen,
Superintendent of Insurance,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of recent date. You wish to know if the provisions of sub-division (b) of sub-division (c) of Section 3 of Revenue Act, 1927, hereinafter set out, apply in a case substantially as follows:

"Corporation A executes mortgage, upon real estate located entirely in Alabama to a trustee to secure one hundred bonds of one thousand dollars each. The money loaned to corporation A for which this security is given is furnished part by insurance company B and part by insurance company C. The mortgage is recorded in Alabama by the trustee, and the filing tax paid. The bonds are issued to each insurance company in proportion to money furnished by it."

The sub-division referred to reads as follows:

Provided, that in ascertaining the premium tax which shall be paid by domestic insurance companies under this section, there shall be deducted from the amount of premiums upon which taxes are due the aggregate amount of loans of money made by such companies in this State, and which shall be secured by existing mortgage or mortgages to it on real estate in this State, and upon which mortgages there shall have been paid the recording privilege tax provided by law."

In reply will say that it is my opinion that, under facts stated, a deduction should be made to each of said insurance companies of the amount of money actually furnished by each.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
January 6, 1928.

Hon. W. A. Leland, Jr.,
Clerk, Circuit Court,
Tuscaloosa, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of December 21, 1927. You want to know first, if you can render the county a bill for costs in a bastardy proceeding wherein the reputed father has been sentenced to hard labor for the county; and second, and should the judgment entry be written up in conformity with the judge's bench notes.

As to your first question I wish to advise you that, a bastardy proceeding is quasi criminal and you must follow the statute strictly in such a

proceeding. Sections 3427 and 3428 are to be construed in pari materia. Upon conviction the defendant must either give bond for the costs and support of the child or be sentenced to perform hard labor for the county for one year, and in that event, the county is liable to you for the costs, and the earnings of the convict must be paid to the Judge of Probate for the support and education of the illegitimate child.

Keuthau vs. State, 93 Ala. 91.

As to your second question, the bench notes are simply a memorandum of the trial judge, and from which the judgment entry is to be written, and the judgment entry should show the sentence of the court and so many days for the costs. However, if there has been a mistake in the judgment entry, it can be amended, nunc pro tunc.

Keuthau vs. State, Supra.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 6, 1928.

Prof. James B. Sellers,
Superintendent of Education,
Tuscaloosa, Ala.

Dear Sir:

This will acknowledge receipt of your communication of January 3. You write as follows:

> "I am writing to inquire if Section 137 page 53, of the School Code of Alabama, 1924, authorizes the County Board of Education to employ a legal advisor. I quote from this section as follows: 'The County Board of Education may employ additional clerical and professional assistance***It seems to me that a legal advisor is a professional assistant. I have discussed the matter with several prominent lawyers and they are of the opinion that the above mentioned Section gives the Board of Education adequate authority to employ an attorney.
>
> The Tuscaloosa County Board of Revenue has requested me to ask you for an opinion as to authority for purchasing adding machine for the office of the County Superintendent of Education."

In answer to your first question, I beg to advise you that, the county Board of Education has no authority to employ a legal advisor.

As to your second question, the Board of Revenue has authority to purchase an adding machine for the office of the Superintendent of Education.

See Section 137 of the School Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 6, 1928.

Hon. Joe Patton,
Tax Collector, Sumter County,
Livingston, Ala.

Dear Sir:

This will answer your communication of November 15, 1927. You write as follows:

"Please advise me whether or not a party should be penalized the 15 per cent on automobile license, where the license inspector has never reported to the Judge of Probate that this party is delinquent, neither has he been cited."

This is to advise you that, the party cannot be penalized unless the License Inspector has reported him as a delinquent to the Judge of Probate. See Opinion of Attorney General Series 3, page 128, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
January 7, 1928.

Hon. R. L. Gordy,
Circuit Clerk,
Chatom, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of January 5th. You want to know if you as Clerk, would be entitled to 5 per cent of Solicitors fee when costs are collected from hard labor agents.

This is to advise you that, the Solicitor's fees are to be taxed and collected by you as Clerk, and you are not entitled to any commission or fees for collecting the same.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 7, 1928.

Hon. J. P. Stiles,
Judge of Probate, Jefferson County,
Birmingham, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of January 5. You want to know if you are required by law to make indexes other than those required to be made under Section 9582 of the Code.

It is my opinion, and I so advise you that, Section 9582 of the Code is mandatory and you must keep a direct and reverse index of conveyances for

both real and personal property. However, I don't think that it was the legislative intent that an index of each volume should be kept, simply a general direct and reverse index in order that the public might be able to find any conveyance of record. The keeping of the index referred to in this Section meets all the requirements thereof.

The opinion of December 29th, 1927, addressed to you is withdrawn.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
January 9, 1928.

Hon. H. J. Brogden,
Judge of Probate,
Andalusia, Alabama.

Dear Sir:

This acknowledges receipt of your letter of December 3rd. with reference to filing tax on deed. You state the following case:

"A" buys a piece of land from "B" and the consideration as set out in the deed is $9,800.00, but just below the description of the land conveyed is set out in the face of the deed that "B" assumes a $3,200.00 mortgage given by "A" to the Federal Land Bank as a part of the consideration. You wish to know the proper amount of the filing under the facts above stated.

So far as applicable to the case stated by you, section 21½ of the Revenue Act, 1927, reads as follows:

> "No deed * * * which conveys any real property within this State, * * * shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record, to-wit: upon all such instruments executed to convey real * * * property situated in this State of the value of five hundred dollars or less there shall be paid the sum of fifty cents, and upon all such instruments executed to convey real * * * property situated in this State of more than five hundred dollars in value, there shall be paid the sum of fifty cents for each five hundred dollars, or fraction thereof, in value of the property conveyed by such instrument. Provided, that only the value in excess of any mortgage * * * upon any property within this State on which the mortgage tax has been paid, shall be taxable under this section."

It will be noticed from reading the above quotation from the Act, that when there is no mortgage or lien upon the property conveyed, or when no filing tax **has been paid** upon a mortgage or lien upon the property conveyed, the **filing tax for the deed is measured by the entire value of the property conveyed.** In the case mentioned by you the entire value of the land conveyed was, as I understand it, estimated by seller and purchaser, to be twelve thousand dollars; the nine thousand eight hundred dollars being cash and in addition thereto a mortgage for three thousand two hundred dollars was assumed by the grantor.

The mortgage on the land being to the Federal Land Bank, no filing tax was paid on filing the mortgage for record. Hence, there is nothing to deduct. The tax must, in such case, be measured by the entire value of the land conveyed, which is twelve thousand dollars. The tax would necessarily be twelve dollars.

There is no deduction from the value of the land conveyed, on account of a mortgage or lien, except in cases where the mortgage or lien has been recorded **and the filing tax on such mortgage or lien has been paid.**

No filing tax is ever paid on filing a mortgage for record made to the Federal Land Bank. Hence, when the mortgage is to the Federal Land Bank, there is no question of "in excess of any mortgage" to be considered.

In such a case, the only thing to be done is to ascertain the entire value of the land conveyed and base the tax on such value.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 9, 1928.

Hon. I. G. Hendon,
Superintendent of Education,
Wedowee, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of January 4. You want to know if the academic qualifications for the office of superintendent of education of Randolph County have been in any manner changed by virtue of House Bill No. 458, approved July 28, 1927.

This is to advise you that, House Bill No. 458, approved July 28, 1927, does not change the qualifications required by Section 116 of the School Code of 1924.

See Local Acts, 1927, page 78.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 10, 1928.

Hon. G. P. Butler,
Judge of Probate, Lee County,
Opelika, Ala.

Dear Sir:

This will acknowledge your letter of Jan. 7. You write as follows:

"I find that by oversight the registrars of Lee County failed to call a meeting to purge the list of voters of said county, under section 392 of Acts of the legislature 1927. I am writing to ask if they can

legally meet at a later date and purge this list. The Acts of the legislature have fixed the date of their next meeting for the registration of voters on the 4th Monday in January, 1928, and I am wondering if they can purge the lists after this meeting."

This is to advise you that, Section 392 of the Code as amended by Acts of 1927, page 276, is mandatory, and the Board of Registrars is without authority to meet except on the first Monday in January, 1928, and each two years thereafter to purge the list of voters.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:AKB
January 11, 1928.

Hon. John D. McNeel, Chairman,
Tax Commission,
Capitol.

Dear Sir:

In reply to your inquiry of this date will say that it is my opinion that Senate Bill 506, approved September 9, 1927 (Acts, 1927, page 564), is a valid and constitutional Act.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Jan. 11, 1928.

Mr. Hamp Draper,
Associate Member State Board of Administration,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of this date. In reply will say that it is my opinion that where a person is convicted of a misdemeanor in the county court and such person then takes an appeal to the circuit court, and is there convicted, the costs in the county court are properly included in the judgment against him for costs.

If he fails to pay the costs so adjudged against him and is sentenced to hard labor for such costs, the items of costs in the county court as well as the items of costs in the circuit court after the appeal is taken should be included in carrying out the provisions of Section 3667 of the Code as provided by Section 5 of Senate Bill No. 100 (Acts 1927, page 53.)

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
January 13, 1928.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of January 6th. You write as follows:

"Enclosed you will find correspondence in regard to vouchers for claims for services by Registrars in Mobile County, for six days work under Section 394 of the Code.

"Please pass upon the validity of these claims, and let me know if I am authorized to draw State Auditor's warrants therefor."

In answering your inquiry, I desire to call your attention to Sections 392 and 393 of the Code of 1923 as amended. Acts 1927, p. 276.

"That Section 392 be amended so as to read as follows: 392. (323) Times For Purging List of Registration. The board of registrars shall meet in each county on the first Monday in January, 1928, and every two years thereafter, for purging the registration list, and may continue in session one week. The names of those who have died, become non-residents of the State, become insane, and been so declared by inquisition of lunacy, or who have been convicted of any offense mentioned in sction 182 of the Constitution, since being registered, or otherwise disqualified as electors under the provision of the Constitution, and any names which may have been fraudulently entered on such list, shall be stricken from the registration list."

"That Section 393 be amended so as to read as follows: (393) (324) Notice and Hearing When Names are to be Stricken from List. When the name of any elector is proposed to be stricken from the registration list, unless he or she is dead or is a non-resident of the State, notice shall be issued to him or her by the board of registrars, citing him or her to appear before the board on the second Monday in February, following, and show cause why his or her name should not be stricken from the list. Said notice shall be served by the sheriff at least five days before the second Monday in February. The board of registrars shall in addition to the above notice give notice in some newspaper published in the county by one insertion."

You will observe that, the Board of Registrars are to meet the first Monday in January, 1928, and every two years thereafter, to purge the registration list.

Sections 392 and 393 of the Code as amended, repeals section 394 by implication. In other words, Section 392 as amended fixes the date of meeting for the purpose of purging the list of voters.

I, therefore, advise you, not to pay the vouchers submitted to you by the members of the Board of Registrars for services performed at a time not authorized by law.

I am returning to you the file in this matter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
January 13, 1928.

Hon. Oliver Miles,
Clerk, Board of Revenue,
Columbiana, Alabama.

Dear Sir:

Your letter of January 12th. has been received. We note you make a request for an opinion on the following matter:

> "As provided in Code sections 6776 et seq. the Board of Revenue has negotiated a loan, reciting in the resolution authorizing it that the proceeds were to be used in the payment of debts contracted for Courthouse and jail supplies, road and bridge material etc., and pledging the current years' taxes as collateral. Your opinion is requested as to whether this loan may be repaid out of the Road and Bridge Fund instead of the General Fund."

The general fund of the county and the road and bridge fund are separate and distinct funds and the one cannot be impoverished to enrich the other. We are of the opinion that supplies for the Courthouse and jail must be paid out of the general fund not otherwise appropriated. When the Commissioners Court or Board of Revenue does any Act whatsoever it must be able to point to some distinct statute authorizing its action. This has been held in numerous opinions by our courts of last resort. We find no statute or the construction of any statute by our Supreme Court that would give the Board of Revenue of Shelby County the authority to pay for supplies for the Courthouse and jail out of funds levied and collected for roads and bridges. It would be equally as true that you could not pay a debt contracted for supplies to the Courthouse and jail out of money that was borrowed and placed to the credit of the road and bridge fund of your county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:LM
Jan. 13, 1928.

Hon. Eugene B. Henry,
Chief Clerk, Probate Office,
Birmingham, Alabama.

Dear Sir:

This acknowledges receipt of your letter of January 9 in which you wish to be advised if a clerk employed in the office of the Judge of Probate and who is also a regularly commissioned Notary Public, is entitled to the fee of twenty-five cents in cases where affidavits are taken before him as to the ages of persons for issuing of marriage license by the Judge of Probate.

I am of the opinion, and so advise that the fees of Notaries Public are prescribed by Section 9250 of the Code. If the affidavit as to the age of persons desiring marriage license is made before a notary in the office of the Judge of Probate, and who is also a clerk in the Probate Judge's office, such notary would be entitled to the fee where he takes such affidavit in that capacity.

However, where such affidavit is made before the Judge of Probate or his Chief Clerk, in that event the fee of twenty-five cents should go into the county treasury.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
January 16, 1928.

Hon. C. E. Thomas,
Superintendent of Banks,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of recent date, in which you ask "if a bank chartered under the laws of the State of Alabama may pledge securities, constituting part or all of its capital stock, with a bonding company to secure it against loss for becoming surety on the bond of such bank as a depository for state or county funds."

In reply will say that the purpose of requiring a bank, organized under the laws of the State of Alabama to have capital stock is, as I understand the law, to secure depositors and other creditors of the bank against loss by reason of dealings with such bank. To divert this security from its purpose would, in my opinion, be contrary to law, and the attempt to do so by undertaking such pledge would in my opinion, be void as against depositors and other creditors of the bank.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Jan. 16, 1928.

Hon. M. A. Long,
Tax Collector Clarke County,
Grove Hill, Ala.

Dear Sir:

This will acknowledge receipt of your letter of January 13. You write as follows:

> "If there is a penalty put on the delinquent tax payers other than the collectors fee please let me hear from you by return mail also what the fee is."

This is to advise you that, the tax collector is entitled to a fee of fifty cents on each delinquent tax payer upon whom demand is made. For making a levy on and sale of personal property for the collection of taxes, the collector is entitled to a fee of one dollar.

See Section 174 of the Revenue Code.

All taxes becoming delinquent bear interest at the rate of eight per cent per annum, which must be added to and collected as a part of the taxes.

See Section 176, 177 and 178 of the Revenue Code of 1924.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
January 17, 1928.

Hon. C. E. Thomas,
Superintendent of Banks,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of January 14th., enclosing letter from Huey and Welch, Attorneys, to you of date January 9th., which contains a question that you desire us to answer. The question is thus stated in said letter to you:

> "The new Building and Loan Act (Acts 1927, page 433, Section 3, sub-section "f") permits Building and Loan Associations '**to receive deposits** and to enter into all other kinds of contracts appropriate to accumulating a fund for making loans.' We note that the Act does not stipulate the form of evidence of such deposits and contracts. Do you think that if a building and loan association issued certificates of deposit instead of stock or stock certificates therefor, that trust funds could be lawfully deposited in such Building and Loan Association?"

In reply will say that it is our opinion that the said provision in said Act permitting Building and Loan Associations "to receive deposits" has no

application to trust funds; as such funds must be handled in each case according to the law of such trust fund, and that the said provision does not apply to funds which must be otherwise handled. There is certainly, in my opinion, nothing in this Act which would relieve a trustee of any responsibility with reference to his trust fund by such a deposit.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
January 17, 1928.

Hon. Bibb Graves,
Governor of Alabama.
Capitol.

Dear Sir:

On November 29th. we received a letter from Mr. John S. Tilley, Secretary to the Governor, in words as follows:

> "At the instruction of Governor Graves, I am enclosing you a file consisting of a copy of a letter from Dr. Denny to Mr. Finnell, and copy of Mr. Finnell's reply to Dr. Denny.
>
> "The Governor asks that you give this your consideration, and write us what you think about the matter, returning the enclosures for our record."

The letter referred to from Dr. Denny asks for a construction of section 6 of the Highway Code, approved August 23, 1927, with reference to paving any street or highway upon which a State Educational or Eleemosynary Institution may front or abut.

This section, so far as is necessary for construing said section in the respect stated, reads as follows:

> "***; and may also cooperate or contract with any municipality, or county authorities in the paving or improving the roadway only, of any street or highway upon which a State Educational or Eleemosynary Institution may front or abut, provided that, where such State Educational or Eleemosynary institution, or the property thereof, fronts or abuts on both sides of the street or highway, the roadway of which is to be paved or improved, the State Highway Department is hereby authorized to, and shall, expend an amount of money sufficient to cover the entire cost thereof, and where such institution, or the property thereof, fronts or abuts on only one side of such street or highway, the said Department is hereby authorized to, and shall, expend an amount of money sufficient to cover only one half of the cost thereof;"

It is my opinion that the foregoing provision in said section has no reference to State Educational or Eleemosynary Institutions located on State trunk highways, as these are cared for in the respect of paving by that part of the law which provides for constructing State trunk highways. If such a highway is to be paved the State pays the entire costs regardless of whose

property abuts the highway. The part of section 6 above copied relates to State Educational and Eleemosynary Institutions located on a city street or county highway other than such as are located on State trunk highways. It means, in my opinion, that where a city decides to pave a certain street or the county decides to pave one of its highways, then it becomes the duty of the State Highway Commission to cooperate or contract with the municipality, in case of the street, and with the county authorities, in case of a county highway, for paving the part of such street or of such highway abutting such property, to the extent of the State Highway Commission bearing one half the necessary expense of such paving of the street or highway, so abutting such property, where such property abuts on one side only of such street or highway, and the entire necessary expense of such paving where such property abuts on both sides of such street or highway.

Municipalities and counties have nothing to do with paving State trunk highways and the Highway Commission has nothing to do with paving city streets or county highways, not constituting part of a State trunk road, other than is specially provided by statute, as in the case under consideration.

The evident purpose of putting in the statute the part of said section 6, copied into this opinion, was to place this additional duty upon the Highway Commission, which would not be a part of its duties in constructing State trunk highways, as it was intended to provide for paving in front of such State property not fronting on a State trunk highway. Both the city and county are without authority to charge the cost of such construction against the State, there being no such authority given by statute; and would each have to bear such expense itself, or leave that part of the street or highway unpaved, but for the provision copied from said section 6 of the Highway Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
January 18, 1928.

Hon. B. Lawrence,
Superintendent of Education,
Clanton, Alabama.

Dear Sir:

This is to acknowledge the receipt of your letter of January 5, 1928.

You inquire as to the authority of the County Board of Education to employ counsel to represent it in defending a suit which may be filed against it by certain persons to enforce a claim which the County Board of Education feels unjust.

I would first call your attention to pertinent provisions of the present school code, now in the process of being printed.

Section 84 of the School Code provides that all property, estate, funds, effects and claims of the County for school purposes shall be vested in the County Board of Education to be held in trust for the public school interests of the County or District.

Section 121 of the School Code provides that the County Board of Education may sue and contract, which provision of necessity involves the liability of being sued.

It has been held that the County Board of Education is an independent governmental agency, possessing the right to maintain and defend suits at law and in equity.

> Kimmons v. Jefferson County Board of Revenue, 204 Ala. 384.
> Board of Education Escambia County v. Watts, 95 Sou.

The authority to sue and to be sued of necessity carries with it the authority to employ and compensate counsel, when such Board is acting within the scope of its authority, and when counsel for such purposes has not been provided by law.

> "Of what avail would be the capacity of the county to sue, if counsel could not be retained for the prosecution of the suit?"
>
> Jack v. Moore, 66 Ala. 188.

The foregoing were the words of the learned Chief Justice Brickell in a case I construe to be exactly analagous to the instant question. At the time this pronunciation was made there was no express provision of statute authorizing the employment by counties of attorneys to represent them.

> "The employment of counsel is a necessary incident to the capacity of suing and being sued and compensation to them is a just claim against the County."
>
> Jack v. Moore, supra.

It is very evident that the duty is imposed upon the County Board of Education to protect the educational interests of the county. It naturally follows that in the protection of these interests it may become necessary to sue or defend suit. To do this involves the necessity of contracting with counsel, where counsel are not provided by statute.

The authority of the County Board of Education to contract is not expressly limited by statute but is only limited by rule of law to contracts within the scope of the authority of the Board.

However, such agencies as Boards of Education are without authority to employ counsel in matters where counsel may by law be provided, either by express provision of statute or by implication. The law provides instances where the Board of Education is to be advised by the Attorney General or, by possible implication, by the County Solicitor; also, where the State is a party in interest directly or indirectly the law provides that the Solicitor and Attorney General shall prosecute or defend its interest. In such instances the Board of Education would not be authorized to employ counsel but must avail itself of the counsel provided by law.

However, in the case you mention I am of the opinion that no counsel is provided by statute to resist or defend a suit brought against the County Board of Education. Necessarily there follows your right to employ counsel and compensate them out of the public funds of the County not appropriated

to a specific purpose by law. It would appear that counsel fees properly incurred may be paid out of the special county three mill tax.

As has been hereinbefore stated, the right to sue and contract of necessity, as a necessary incident thereto, involved the right to employ counsel where no counsel is provided by law.

State v. Aven, 70 Ark. 291.
McCafferty v. School District, 74 Wis. 100.
Burgers v. School District, 100 Mass. 132.
Clark v. Eagerton, 207 Ala. 491.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:AKB
January 18, 1928.

Hon. M. V. Henry, Treasurer,
Jefferson County,
Birmingham, Alabama.

Dear Sir:

I am in receipt of your favor in which you inquire as to the constitutionality of Act 289 Senate Bill 179, providing for the compensation of the Board of Registrars in counties of a certain population. I find no objection to the Act. In my opinion, that part of the Act which amends Section 403, is not an attempt at double classification. The Act does make the provision, that in counties of 150,000 or more inhabitants, the registrars must receive a certain compensation and are given certain authority, and the Act does make provision for counties where there may be more than one court house.

After a consideration of numerous decisions of the Supreme Court, which have been cited you in other opinions, I am of the opinion that the mere fact that provision is also made for counties where there may be more than one court house, does not, of itself, work a double classification. I am of the opinion that the Act may apply to all counties in the state, whether or not there may be a division of the circuit court, and that there is ample provision made for counties where there may not be more than one court house. I reach the conclusion, in view of decisions of our Supreme Court, that the Act may have a prospective application to the State as a whole, and is, therefore, not a Local Act.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

copy to
Hon. J. L. Sprinkle,
Chairman, Board of
Registrars,
Birmingham, Ala.

Written by Mr. McCall:LM
Jan. 21, 1928.

Hon. Alfred H. Brown,
Sheriff of Escambia County,
Brewton, Alabama.

Dear Sir:

In answer to your letter of January 16, 1928, I refer you to Sections 4247 and 4248 of the Criminal Code of 1923. These sections hold as follows:

> That where a machine is so operated or constructed that it might appear that by placing a coin or slug in it, one may by manipulating the machine possibly obtain therefrom more or less than value received, this is an element of chance and is in the nature of a lottery and is in violation of both sections above mentioned.
>
> The fact that the slugs bear the statement on them that they are not redeemable or are of no cash value is immaterial, if in fact they are **redeemed** or are **redeemable.** The Constitution prohibits the legislature from authorizing the operation of lotteries. All lotteries are absolutely unlawful and come within the scope of Sections 4247 and 4248 of the Code.
>
> Under these sections where machines are operated in violation of the law, you may make a case against (1) (The person who sets it up in the place for operation.) (2) (The person in whose place of business it is carried on.) (3) (The person who actually operates it or pulls the handle.)

Under the law there is no provision for confiscating and destroying these machines. However, they may be seized by you and held for evidence and no proceedings can stand against you for so acting.

There is a provision in the revenue laws for licensing slot machines which are operated in a lawful manner, but the fact that a license has been obtained to operate them in a lawful way will not protect against the prosecution for unlawful operation. As a matter of fact, where you find a machine unlawfully operating, it is your duty to arrest the parties interested therein, seize the machine, hold it for evidence and for the disposition of the case, and you may also arrest the parties for operating the machine without a license.

I am glad you wrote me about this matter. These things have become an all prevailing nuisance and I hope you use every effort to enforce these laws.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Jan. 21, 1928.

Mr. F. T. Herlong, Tax Assessor,
Greenville, Ala.
Dear Sir:

Your letter of January 14 is hereby acknewledged. You write as follows:

"Please give me your opinion on the following: Automobile assessments, assessed by the new Tax Assessor coming in, October, 1927.

It seems that I am assessing the autos for 1927, while all the other property of the 1927 year comes under the former assessor. What I am trying to arrive at is on what per cent do I figure my commissions on the automobile assessments.

I understand that ordinarily they would be added to the regular ad valorem values and the commissions figured in the regular way, but in this case I am only entitled to the commission on the auto assessments."

In reply will say that your commissions for assessing automobiles is not different from your commissions for assessing other personal property. Since you receive pay for assessing automobiles sooner than for assessing any other kind of property, it might be considered as the first thousand, up to one thousand of the tax collected and so on. In other words, the first thousand dollars of taxes collected from taxes assessed by you takes the highest rate and so on with the lower rates. It is immaterial whether such collections are for taxes on automobile or other property. The order of collection of taxes assessed by you controls. It is immaterial what the kind of property assessed is first collected on.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
January 23, 1928.

Mr. M. V. Henry,
County Treasurer,
Birmingham, Alabama.
Dear Sir:

I acknowledge receipt of your inquiry of October 18, 1927, in which you wish to be advised as follows:

"As County Treasurer of Jefferson County, Alabama, I respectfully request your opinion in writing as to the following questions of law connected with my duties as such County Treasurer:

"Assuming that the Act approved August 11, 1927, entitled an Act "to create the office of County Attorney in all counties in this state having a population of 200,000 or more" etc. being Act. No. 247, S 431, is constitutional, I desire to be advised whether it operated a repeal of so much of the act approved October 31, 1921, (General and Local Laws of Alabama, special session 1921, page 68, section 7) as makes it the

duty of the Board of Revenue of this county to pay a reasonable attorney's fee incurred by the County Treasurer in resisting the payment of any warrant issued against any fund or funds of the county and also for necessary legal advice obtained by such county treasurer on matters pertaining to the legal conduct of his office.

"If your opinion shall be that the later act operates as an implied repeal of the stated part of the former act, then I desire to be advised whether in the light of the later act approved Aug. 11, 1927, it would be competent for the Board of Revenue of this county to retain or employ an attorney to represent the County Treasurer in suits brought against him or to advise him with respect to his duties in the conduct of his office under the authority contained in sub-section eight of section 5498 of the Code. In this connection, I call your attention to the case of Clark v. Eagerton et al, 93 Sou. 455.

"May I respectfully request an early opinion from you on these matters because of threatened litigation against me as County Treasurer involving many thousands of dollars to Jefferson County.

"I hereby certify to the foregoing facts and that the advice sought is necessary to the present performance of my duties as such County Treasurer."

In reply to the foregoing, I advise you that, the Act approved August 11, 1927, designated as No. 247, S. 431, entitled, An Act "To create the office of County Attorney in all counties in this State, having a population of two hundred thousand or more, according to the last or any subsequent Federal Census, to presscribe the method of their election, to fix their term of office, to prescribe the duties of said office, to fix the compensation thereof and the method of their removal" is constitutional. I further advise you that said Act repeals all laws or parts of laws in conflict therewith. That is to say, the Act approved August 11, 1927, the title to which is above quoted, is the only authority of law for an attorney to represent you in your official capacity and for his compensation therefor from public funds. Said Act must be strictly complied with.

It is my opinion, and I accordingly advise you, that sub-section eight of Section 5498, Code 1923, only applies to counties falling without the classification named in the recent Act here considered.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Jan. 23, 1928.

Mr. F. T. Herlong,
Tax Assessor,
Greenville, Ala.

Dear Sir:

This acknowledges receipt of your letter of Jan. 14. You write as follows:

"I am writing you for your opinion on the following: We have here in our County, or rather in our city, two dealers in stock. One of them in addition to handling mules and horses for sale, handles during the year quite a large number of cattle at times he has only a few on hand and again he will have a large amount. He of course ships them to foreign markets. Now on the first of October he claims he did not have any on hand, but soon after I discovered that he had a nice drove of cows, and when I approached him in re same he said he was not going to assess them nor was he liable for them. The other party I have reference to just handles mules and horses for sale and as in the other case he never has any on hand around the first of October. Please advise so that I may proceed intelligently."

In reply will say that when property is in this State on October 1st of any year, it is assessable to the one who owned it on that date. He may sell it on October 2 but it should be assessed to him. The lien for taxes, however, follows the property and if the taxes cannot be made out of the one to whom it is assessed, such property may be levied on and sold to pay the taxes assessed against the owner on such October 1.

Where property is brought into the State after October 1 of any assessment year and before the last Monday in March succeeding, such property is assessable to the party who first owns it in this State.

Under the foregoing, it will appear that such cows or mules as were in this State on October 1 should be assessed to the person who owned them on that date; if brought into the State subsequent to October 1 and before the last Monday in March succeeding, they should be assessed to the person first owning them in this State.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:LM
Jan. 24, 1928.

Hon. B. G. Wilson,
Circuit Solicitor,
Jasper, Alabama.

Dear Sir:

This is to acknowledge receipt of your letter of January 20. You inquire whether or not a circuit solicitor is entitled to his traveling expenses when traveling within his circuit but away from his home. You make reference to a general act of 1927, page 688.

In my opinion this provision of the legislature by way of appropriation, is purely to pay traveling expenses and other expenses of circuit solicitors when on special duty under proper authority without their circuits.

I do not think that there is any provision of law to pay a circuit solicitor's traveling expenses within his circuit.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:K
January 24, 1928.

Hon. J. P. Marchant,
Judge of Inferior Court,
Seale, Alabama.

Dear Sir:

This is to acknowledge the receipt of yours of January 20th., in which you make the following request:

"I have duly and within my authority, issued a warrant for the arrest of a person charged with the offense of violating the prohibition law, a misdemeanor, an offense of which I have only preliminary jurisdiction.

"However, I construe the statute to the effect that I must try this defendant, in the absence of a waiver of a preliminary examination, and either discharge him or bind him over to await the action of the grand jury. The defendant has demanded that I issue a warrant returnable to the County Court or desist from the prosecution begun in my court or from the hearing of the cause in my court. He has not demanded a grand jury investigation. In support of his contention his counsel has offered for my consideration the case of C. L. Windham v. N. D. Cobb, and the order of the Clerk of the Court of Appeals in that cause.

"Please advise me what course I shall pursue in this case."

You have preliminary jurisdiction in the trial of a person for a violation of the prohibition law.

Section 3856, Code 1923.

When your jurisdiction attaches by the issue of your warrant and by the arrest of the party it is your duty to hear the cause as a committing magistrate and if there is not probable cause for believing the defendant guilty it is your duty to discharge him. If there is probable cause for believing him guilty you should bind him over to the Circuit Court to await the action of the grand jury. The foregoing is your duty in the case of an offense of which you have not final jurisdiction, and where the defendant has not demanded a grand jury investigation with a waiver of the preliminary hearing. However, the defendant may waive a preliminary hearing and demand a grand jury investigation, in which event, it is your duty to bind him over to the circuit court to await the action of the grand jury.

Ex Parte Davis, 95 Ala. 9, Jones v. State, 149 Ala. 241.

In the instant case, when your jurisdiction has attached there is no provision of law by which the defendant can deprive you of your statutory jurisdiction by demanding that you issue a warrant returnable to the county court of your county.

I construe neither the constitutional provisions relating to a speedy trial

nor Section 3818 of the Code to in anywise interfere with your jurisdiction as hereinbefore set out. Especially is this my opinion in view of the fact that it is not mandatory upon you as a committing magistrate to issue a warrant returnable to the county court.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:K
January 25, 1928.

Mrs. L. B. Tunstall,
Director, State Child Welfare Dept.,
Montgomery, Alabama.

Dear Mrs. Tunstall:

I have your letter of January 18, 1928, in which you refer to the Code of 1923, sections 143 to 152, both inclusive. You ask that I advise you if it is legal for the county boards of education to appropriate public school funds to the county health unit and impose the duties of school attendance officer upon the public health nurse in the same manner as the above named statute provides for school attendance through a county child welfare superintendent.

I understand from your letter that you wish to know if a county board of education can appropriate public school funds to the county health unit with the agreement that in view of such appropriation to the county health unit the county health nurse shall perform the duties of school attendance officer.

The School Code of 1927, section 303 is as follows:

"The county board of education shall arrange the county, exclusive of cities, into one or more attendance districts, and said board shall appoint an attendance officer for every district created, who, shall hold his office at the will of the county board of education, and the board of education of each city having a city board of education, shall appoint one or more attendance officers to serve at the pleasure of the appointing board. City and county boards of education, boards of revenue and courts of county commissioners may jointly employ any person or persons to carry out the provisions of this article and such additional duties as may be assigned them by such boards or governing bodies."

The School Code of 1927, section 304 is as follows:

"The attendance officers who are employed by the county or city board of education shall be paid by the respective boards of education such salaries as may be required to secure efficient service. Said attendance officer shall be paid as other employees of the county or city boards of education are paid, but no attendance officer shall receive any compensation under the provisions of this Code until he shall have filed such reports as are required by the State Board of Education of the county or city employing him."

The School Code of 1927, section 325 contains the provision that no person shall be employed in the public schools of the State as attendance officer, unless such person shall hold a certificate issued by the State Superintendent of Education, but that said provision shall not operate to disqualify present incumbents except as otherwise provided by law.

You will observe that the above sections 303, 304, and 325, contain general provisions for appointment of attendance officers.

The Code of 1923, section 143, provides for the establishment of county boards of child welfare whenever the court of county commissioners or board of revenue of the county and the county board of education shall by resolutions declare that such board should be established.

The Code of 1923, section 150, provides for the employment of an executive agent to be known as the county superintendent of child welfare.

The Code of 1923, section 151, provides that the county superintendent of child welfare shall under the direction of the county or city board of education or both and the department of education perform all the duties imposed by law upon the school attendance officer and enforce the compulsory education law.

The minutes of the meeting of October 6th. and 7th., 1927, of the State Board of Education contain the following resolution:

> "That the State Board of Education approve the county board of public welfare which the county board of education and the county board of revenue jointly support, and a service which provides a worker who under the board of education will have charge of school attendance, and under the board of public welfare will have charge of juvenile court matters. Further that it is made mandatory upon county and city boards of education to cooperate in the employment of a county superintendent of welfare when such joint service may be established by the county board of education paying not more than 60 per cent of the cost that is, salary and expenses of county superintendent of welfare."

You will observe that the foregoing resolution shows that the State Board of Education approves the county board of public welfare. After reading the entire section of said resolution I am of the opinion that said section shows clearly that the State Board of Education wants the various county boards of education to cooperate with the courts of county commissioners and boards of revenue in organizing county boards of child welfare and in the event the county board of education secures the cooperation of the court of county commissioners or boards of revenue in the organization of a county board of child welfare then the above resolution of the State Board of Educatoin requires the county board of education to cooperate in the employment of a county superintendent of child welfare.

After a careful consideration of the above it is my opinion that the various county boards of education are required to do all they can to secure the cooperation of the courts of county commissioners or boards of revenue in organizing county boards of child welfare.

It is also my opinion that the school attendance law is to be enforced

by the county superintendent of child welfare in all counties which have a county superintendent of child welfare.

It is also my opinion that the county boards of education cannot appropriate public school funds to the county health unit and impose the duties of school attendance officer upon the public health nurse.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Jan. 30, 1928.

Hon. S. P. Dunn,
Judge of Probate,
Evergreen, Ala.

Dear Sir:

This acknowledges receipt of your inquiry of January 20. You write as follows:

> "On November 21, 1927, I sold a license for a tractor and trailer to be drawn by same. These licenses amounted to $150.00 plus fees. The purchaser of the above license made a contract for his tractor and trailer, and this contract was cancelled and the tractor and trailer were returned to the dealer from whom they were purchased, so after the license had been reported and paid for he returns the license to this office and thinks he should have a refund on them as they were not used.
>
> "Please advise me at your earliest convenience by letter if there is any law whereby I may get a refund on him on the facts above stated."

In reply will say that where a person has taken out a license for a privilege and the money has been paid into the State and County Treasuries there is no provision of law by which he may surrender his privilege so obtained and have the money paid back to him.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
January 30, 1928.

Hon. W. J. Hardy,
Sheriff of Greene County,
Eutaw, Alabama.

Dear Sir:

I am in receipt of your letter of January 25th, in which you request an opinion on the following matter:

> "Would you please advise me as to whether a State License Inspector has authority to execute warrants issued by a Justice of the Peace?"

The License Inspector for the County is authorized to serve citations

and to make arrests in all cases for violating the revenue laws of the State and in doing so he is clothed with the same authority that the Sheriffs of various counties are clothed. You will find on page 183, section 72, General Acts 1927, the latter part of this section gives him this authority and reads as follows:

"All citations to delinquents shall be served by any lawful officer, or by the license inspector, or his deputy who shall be allowed as a fee One Dollar and Fifty Cents ($1.50) for each citation served, to be taxed against the delinquent. From penalties collected the license inspector shall be paid all fees due him for services, as provided in this Act. The residue shall be paid two-thirds to the State and one-third to the county. License inspectors shall have the same power to arrest persons violating the revenue laws of the State as is now vested in the sheriffs of the State, and shall receive the same fees for such service."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
January 30, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I acknowledge receipt of your letter of January 30th, which reads as follows:

"I am handling you herewith a letter from Hon. George E. Stone, Treasurer of Mobile County, in which he wishes to be advised whether or not the claim in favor of the State of Alabama for an examination made by an Assistant Examiner of Accounts of the books, accounts and vouchers of the Superintendent of Education of Mobile County, and of the Treasurer of School Funds of Mobile County, is a proper charge against the general funds of Mobile County, or whether it should be paid out of the school funds.

"While it has been held by this Department that claims were payable out of the General Fund of the County, yet the Treasurer of Mobile County suggests in his letter that he desires a specified opinion thereon.

"Please advise therefore so that I may inform him."

The letter enclosed by you reads as follows:

"I am enclosing to you, unpaid, a claim of Assistant Examiner W. B. Sasser, for examinations of school accounts in this county.

"I would ask your careful questioning of this account as a claim against Mobile County's funds, as disbursed by me, rather than against Mobile County **School** funds.

"In this county the school fund is a separate fund, handled by a separate Treasurer, and no part of the school fund is in any way under the control of the Board of Revenue and Road Commissioners of Mobile County. It would not appear logical, therefore, that a part of the funds disbursed by the Revenue and Road Commissioners should be used to pay for the audit, or examination of accounts in which they have no interest, and over which they have no control.

"I would therefore ask that you refer the matter to the Honorable Attorney General, with the above facts before him to advise whether Mobile County's (General) Fund should pay for an examination of School Funds of Mobile County.

"The Treasurer of the School Funds, to whom I forwarded the claim, has returned it to me, so I am enclosing it."

Section 749, Code of 1923, provides as follows:

"Immediately after the completion of an examination of the several county officers, which shall be made at the same time that examinations are made for the State, the examiners making such examination, shall make out an account, under oath, for and in the name of the State, against said county, for approximately the number of days engaged in the county examination for such county at the same rate of pay and expense allowed for State work, and file the same with the clerk of the board of revenue, court of county commissioners or courts of like jurisdiction of said county, and also file a duplicate thereof with the State Auditor, and the State Auditor shall thereupon draw his warrant upon the county treasurer for said amount, and the county treasurer, immediately upon the receipt of the auditor's warrant, shall pay the said amount into the state treasury out of the first county funds coming into his possession."

The Superintendent of Education of Mobile County is a County officer. Of this, there is no question. Construing the statute above quoted, within the purview of the facts outlined by you, I am of the opinion, and so advise that the claim of Assistant Examiner of Accounts, W. B. Sasser, for examinations of school funds in Mobile County is a proper charge against Mobile County's general fund. Such examinations here considered are made for the State and County, the State paying for the examinations required by the State, as such, and the County paying for the examination of the several county officers. Under the statute, the State furnishes the examiner for the county, but the county must pay, out of its General Funds, for such work "at the same rate of pay and expense allowed for State work," and this without regard to the particular county officer examined or the particular fund which the examiner may check over and investigate.

I herewith return enclosures.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
January 30, 1928.

Hon. G. C. Grantham,
Clerk, Circuit Court, Geneva County,
Geneva, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of January 23rd. You write as follows:

> "Acts 1919, page 200, making clerks of the Circuit Exofficio clerks of the County Court, regulating fees for services as such clerks 'The fees and compensation of said clerks for their duties as clerks of the County Court shall be the same as now allowed by law to the Clerks of the Circuit Court in Criminal cases, and shall be paid in like manner.'
>
> "Clerks in the Circuit Court are paid a continuance fee in criminal cases. Are they entitled to the continuance fee in the County Court? I am of the opinion that under this Section of the Acts the clerk is entitled to this continuance fee and that the same continuance fee should be charged in the County Court as in the Circuit Court. I will thank you to give me ruling at your earliest convenience."

This is to advise you that, as Clerk of the Circuit Court you are entitled to a continuance fee of twenty-five cents under section 3739 of the Code.

Copeland vs. Jefferson County, 192 Ala. 12.

As to the right to tax a fee of twenty-five cents in cases continued by the County Court, I desire to call your attention to Section 3804 of the Code of 1923, which reads as follows:

> "The fees and compensation of said Clerks for their duties as clerks of the County Court **shall be the same** as now allowed by law to the clerks of the Circuit Court in criminal cases, and shall be paid in like manner."

See Report of Attorney General, 1918-20, page 352.

I am of the opinion that, you are entitled to a continuance fee in the County Court, the same to be taxed as provided by Section 3739 of the Code of 1923.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:LM
Jan. 30, 1928.

Hon. J. H. Webb,
County Attorney,
Mobile, Ala.

Dear Sir:

Your letter of January 16, 1928, to Hon. Charles McCall, Chief Examiner of Accounts, has been referred to this office for reply. You state in your letter that your county engineer has raised the question of the right of dealers to add a two cent tax on the price of lubricating oils used by the county. You request that you be advised if such is permissible.

This office rendered an opinion to Mr. W. P. Davidson on Feb. 14, 1927, holding that the Board of School Commissioners of Mobile County must pay the state tax on gasoline used in automobiles which are being operated by said board. This opinion contains the following:

"The Acts of the legislature which require payment of the gasoline tax provide that the tax must be paid by every distributor retail dealer or storer of gasoline and it further provides that when any distributor retail dealer or storer has paid said tax, such payment shall be sufficient, the intention being that the tax shall not be paid but once.

"The tax in question is an excise tax. Cooley on Taxation, volume one, fourth edition, page 125, section 42, defines excise taxes as being taxes laid upon the manufacture, sale or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges.

"The Acts of the Legislature which require payment of the gasoline tax show clearly that the tax is an excise tax charged the distributor, retail dealer or storer for engaging in the business of distributing, selling or storing gasoline and the Acts providing for the tax do not require that all or any part of said tax shall be paid by the consumer of gasoline.

"In view of the above, it is my opinion that the state gasoline tax is a tax as to the distributor, retail dealer or storer, because they are required by the Acts of the Legislature to pay the tax, and if the distributor, retail dealer or storer adds a sufficient amount to the sale price of gasoline to pay the tax this additional amount is merely a part of the sale price as to the consumer and he cannot avoid paying same.

The above opinion applying to tax on gasoline would necessarily apply to tax on lubricating oils used by the county. I advise you therefore, that it is my opinion that if the dealer who sells the county lubricating oils adds a sufficient amount to the sale price of such oils to pay the tax, this additional amount is merely a part of the sale price and the county cannot avoid payment of same.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:B
February 1, 1928.

Hon. E. L. Colebeck,
Superintendent of Education of Hale County,
Greensboro, Alabama.

Dear Sir:

This is to acknowledge receipt of your letter of January 24, 1928, in which you state that the City Board of Education was renting a certain building in the City of Greensboro and using it as a Grammar School. You also state that this rent was being paid out of the Special City three mill tax which has been levied for a period of years.

You inquire whether or not the County Board of Education may continue to pay this rent out of the funds under its control from the Special City School Tax. I note the fact that the control of education affairs of the City of Greensboro, by operation of law, has been transferred from the City Board of Education to the County Board of Education.

The constitutional amendment and the statute both provide that the special three mill city tax which may be levied, shall be used for public school purposes. I am of the opinion that this tax was properly used by the City Board of Education in paying rent on a building which was being used as a grammar school.

A section of Article 9 of the School Code of 1927, which is now in the process of being printed, provides that where the control of the public school affairs has been transferred from the City Board of Education to the County Board of Education, the existing indebtedness created prior to such transfer, and the rights to collect the same, are in no wise impaired.

I am of the opinion that the above provision is tantamount to a direct mandate to the County Board of Education to assume the debts and contracts of the City Board of Education which were legally and properly incurred and entered into.

I am of the opinion that the County Board of Education has authority to carry out the provisions of the contract entered into by the City Board of Education for the rent of the school building mentioned.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
February 2, 1928.

Hon. J. F. Posey,
Judge of Probate,
Prattville, Alabama.

Dear Sir:

I am in receipt of your letter of February 1st., in which you make request for an opinion on the following matter:

"I will thank you to give me a ruling on Section 164 of the Acts of 1927, page 393.

"The specific information I want, is this. Does this section exempt from road duty any or all persons working on a highway that is being constructed or repaired by the Highway Commission. The overseers in this county have warned some people to work on the roads, that have a contract with the State Highway Commission to repair or pave this road. (Montgomery Birmingham Highway)."

I gather from the above statement that you desire to know whether or not a man working for a contractor who is engaged in building or repairing the Montgomery and Birmingham Highway (if he is subject otherwise) would be exempted from working the public roads of Autauga County under Section 164 of the General Acts of Alabama, 1927, page 393.

I am of the opinion, and so advise that, if his occupation for the time is simply that of an employee who is working for a person, firm or corporation having a contract with the Highway Department to build or repair said road, this would not exempt him from road duty under section 164 of this Act.

It is true that if employees of the State Highway Department are engaged in emergency work such as repairing washouts, rebuilding bridges that have been destroyed, etc., for the time they are so engaged they are exempt on proper certificate as referred to in section 164 of the Acts of 1927, page 393, but not otherwise.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

See op. Oct. 4, 1928.

Written by Mr. Haynes:L.
February 2, 1928.

Hon. J. F. Posey,
Judge of Probate, Autauga County,
Prattville, Alabama.

Dear Sir:

I am in receipt of your letter of January 30th. making request for an opinion on the following matter:

"Will you please give me a ruling on Section 2658 of the Code of Alabama, 1923, whether or not a Probate Judge who went into office on Jan. 15, 1923, would have to pay the premium on his bond or not, or would the County pay this premium."

Section 2658 of the Code of 1923 became effective by proclamation of the Governor on August 16, 1924. This Section reads as follows:

"Bonds of County Officers made by Surety or Guarantee Companies.—After the adoption of this Code the officers and authorities authorized to fix and approve or to require additional bonds as to all county officers shall require that the bond of such county officer be made by some surety or guarantee company or companies authorized by the laws of this state to make such bond; and the premiums of such bonds shall

be a charge against the county and payable out of the county treasury upon the certificate of the officer or agency requiring, fixing or approving the bond."

You will note the statute provides "that after the adoption of the Code, etc." The Code went into effect by proclamation of the Governor August 16, 1924, this statute could not be construed to be retroactive, and this being true a Probate Judge making bond as of January 1923, would not come under this provision of the statute, and the county would not be required to pay premium on his bond.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
February 7, 1928.

Hon. H. O. Garrett,
Clerk, Circuit Court,
Dadeville, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of January 31st. You write as follows:

"I am enclosing you herewith a copy of letter written you on 29th. ult., as for an opinion as to the fees for preparing transcripts for the appellate courts.

"I have bills to make out in two appeal cases, and am waiting for your opinion before making them out and presenting to the unsuccessful parties."

Section 7278 of the Code of 1923, (3713 Code of 1907) formerly provided for a fee of ten cents per hundred words for the original, five cents per hundred for the copy furnished the appellee, and $2.50 for the copy of the transcript to the Supreme Court required to be kept on file in the office of the clerk. However, under section 7278, the clerk is allowed fifteen cents per hundred words for the original and five cents per hundred words for the copy. The clerk now being entitled to the fees provided by this section of the Code.

See Opinions of Attorney General 1918-20, page 375.

Section 7276 of the Code of 1923 reads as follows:

"Clerks, sheriffs, and other officers in this chapter named are entitled to receive, for the services respectfully annexed, **and no more;** to be taxed, paid, and collected in the manner directed by the provisions of this Code."

See Opinion of Attorney General to H. W. Galloway, August 17, 1927.

Section 6108 does not apply to criminal cases.

Acts 1927, page 45.

Sloss-Sheffield Steel & Iron Co. vs. Brooks, 19 Ala. App. 107.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
February 8, 1928.

Hon. Hamp Draper, Associate Member,
Board of Administration,
Capitol.

Dear Sir:

I am in receipt of your letter of February 1st. in which you make a request for an opinion on the following matter: Can the Judge of a County Court after a fine and sentence and before the fine is paid and sentence executed, set aside his judgment and nolle prosse the case on payment of costs.

I am of the opinion and so hold that the Court has the right to set aside a judgment of conviction and make any order in the case he may see fit under Section 6670 of the Code. The Judge has control of his judgments for thirty days after rendition of the same. After the lapse of this time he loses all power and control over same, but in the case to which you refer the court seems to have acted within the time prescribed by statute as the judgment of conviction was rendered on January 2, 1928, and the order setting it aside was made on January 30, 1928.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
February 8, 1928.

Mr. Byron Graves,
License Inspector,
Oneonta, Alabama.

Dear Sir:

This acknowledges receipt of your letter of February 7th. You write as follows:

"I have a party here who is doing some plumbing, he does not own a plumbing shop, but does work and is I understand doing some contract work, but not maintaining a shop. He does not devote his time to this work, but does most any kind of work he can get to do. Now what I

want to know should I charge him a license for this work, or is he chargeable with a licèns. He has taken out city license in the town of Oneonta, and will pay these if he is chargeable with it but does not think that he should be charged with a license because he is not maintaining a shop, nor engaged solely in this business."

"A master plumber is a plumber having a regular place of business and who himself, or by journeyman plumbers in his employ, performs plumbing work."—Com. vs. McCarthy, 225 Mass. 192. The foregoing, we think, is a proper definition of the words "master plumber" as used in schedule 87 of Section 361 of the Revenue Act, 1919. Such being the case, it is our opinion that the person mentioned by you is not required to take out a plumber's license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:ML,
February 8, 1928.

Hon. Chas. H. Moffett,
President of Board of Administration,
Capitol.

Dear Sir:

This is to acknowledge the receipt of yours of February 3rd, in which you inquire as to the constitutionality of a certain Section of Senate Bill 100, Acts 1927 p. 52.

Section 3, to which you refer, reads in part, as follows:

"****The State Board of Administration shall receive said county convicts in the same manner as they now receive State Convicts, and shall pay to the proper county authorities the items of costs provided in Section 3667 of the Code of Alabama as now provided by law. Provided, however, that where these items of costs have been paid to the proper officers for the convicts now serving their sentence the same shall not be again paid."

The title of the Act reads as follows:

"To further regulate the custody, care, maintenance and use of the county convicts by the several counties of the State **and by the State through its State Board of Administration and to** repeal all laws and parts of laws in conflict herewith."

You inquire whether or not, Section 3, a part of the subject of the legislation is sufficiently expressed in the title of the Act.

The test is whether or not anything is embraced in this Section which may not be referred to the title.

State vs. Sayre 118 Ala.

The conclusion that the subject is **not** covered by the title should **not** be reached except by liberality of construction and with freedom from verbal criticism.

Ex parte Pollard 40 Ala. 77.

The constitution, Section 45, exacts an announcement in the title of the subject, but does not dictate any degree of particularity.

Ex parte Sayre Supra.

If the subject of the Act is expressed in its title the constitution is satisfied.

Ex parte Pollard Supra.

The object is to prevent deception. Generality and comprehensiveness are not objectionable.

So long as by fair intendment the title, though general, can be considered to cover the subject the same is sufficient.

State vs. Street 117 Ala. 203.

When the subject is expressed in general terms, everything which is necessary to make a complete enactment in regard to it, or which results as a complement of the thought contained in the general expression, is included in and authorized by it.

Ballentyne v. Wickersham 75 Ala. 533.

In my opinion the clause of the title, providing for the **further** regulation of the **maintenance** and **use** of county convicts by the **State through its State Board of Administration** is sufficiently comprehensive to cover the provision of the Act as to the payment of the costs; viz, Section 3 of said Act.

The clause of the title providing the regulation of the use of county convicts by the State, certainly is broad enough to cover a subject which authorizes the use of county convicts by the State and certainly such provision is so comprehensive as to cover a provision as to the disposition of the proceeds derived by the State from the use of such convicts. It is clear that it was the intention of the legislature to provide that the costs mentioned, in Section 3 of the Act in question, should be paid out of the fund arising from the labor of convicts. Such provision is cognate to the purpose expressed in the caption and is therefore embraced in the title of the Act.

I have carefully considered the decisions of the Supreme Court in the Gayler case 108 Ala. 514 and the Burgin case 113 Ala. 170 and do not consider them authorities contrary to the position here taken. On the other hand, the Burgin case construed similarly the title of an Act of 1893, the wording of which is analogous to the title of the Act in question.

In my opinion the Act to which you refer, S. B. 100 Acts 1927 p. 52, is in nowise offensive to any provision of the constitution.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:B
February 9, 1928.

Hon. Hamp Draper, Associate Member,
Board of Administration,
Capitol.

Dear Sir:

I am in receipt of your letter of February 7th., making a request for an opinion on the following matter:

> "I am handing you herewith cost bills, transcripts, etc., in the case of Searcy Billings, Barbour County, case No. 225, and Geo. Raney, Barbour County, case No. 241. Please advise me if these cost bills may be paid, also if the Mayor or Recorder, who was the sentencing authority in these cases can sentence for cost."

Under Section 1945 of the Code of Alabama, recorders are given original and concurrent jurisdiction with the county courts for trial of misdemeanors committed within the city or town within the police jurisdiction thereof.

See ex parte Williams, 91 So. 914.

This being true the recorder had jurisdiction to try defendants and to sentence them to hard labor provided the offense was committed within the corporate limits or within the police jurisdiction of the town of Eufaula.

In answering your inquiry as to the costs will say that under section 3 of an Act of the Legislature, General Acts, 1927, entitled "To further regulate the custody, care, maintenance and use of county convicts," page 52, the State Board of Administration is required to pay the cost of all county convicts turned over to the State and said cost is to be paid as provided in section 3667 of the Code of 1923. In cases where defendants are convicted and sentenced to hard labor, it is my opinion and I hold that the bills of costs referred to in your request, namely, in the cases of George Raney, for larceny, and Searcy Billings for operating a motor vehicle while intoxicated are proper charges and should be paid. See opinions of Attorney General, December 9, 1927, to your Department.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
February 10, 1928.

Mr. John S. Catts,
License Inspector,
Verbena, Alabama.

Dear Sir:

This acknowledges receipt of your letter of February 8th. with reference to license for a motor vehicle constructed by taking the top off the back end of a Ford Roadster and placing thereon, instead a delivery body, three feet wide, eight feet long and thirteen inches deep.

In reply will say that, in my opinion, the opinion referred to by you in

Attorney General's Reports, 1920-22, page 339, is a correct interpretation of the law as applied to such a case, and it has been consistenlty followed in instructions from this office.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:B
February 10, 1928.

Hon. L. E. Gibbons,
Sheriff of Henry County,
Abbeville, Alabama.

Dear Sir:

In answer to your letter of February 9th concerning slot machines operating in your county, I invite your attention to sections 4247 and 4248 of the Criminal Code of Alabama, both of which apply to slot machines.

My advice to you would be to seize all of these machines concerning which you have evidence that they are being operated as devices of chance, keep them securely as evidence and have warrants sworn out against the parties operating them under either one of the aforementioned sections of the Code.

The question as to whether or not these machines may be destroyed has never been passed upon and there is some doubt as to whether they may be confiscated for this purpose. However, they may be seized and used as evidence and it is up to the court to decide what disposition to make of them.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:B
February 11, 1928.

Hon. S. H. Blan,
State Auditor,
Capitol.

Dear Sir:

This acknowledges receipt of your inquiry of February 10th. You write as follows:

> "We have issued warrants to J. B. Evans, who was Circuit Clerk of Dallas County, for court costs accruing there.
>
> "Since that time Mr. Evans has died, he having sent in these cost bills to the Convict Department prior to his death.
>
> "His successor wants us to change the warrants in her favor.
>
> "Inasmuch as these cost bills were signed 'J. B. Evans, Clerk, Circuit Court.' Could we change the warrants and make them payable to 'Clerk, Circuit Court, Dallas County.' "

In reply will say that cost bills sent in by circuit court clerks for payment by the State of costs in criminal cases under section 3667 of the Code, are payable to the Clerk, as an officer, and not to the individual who happens to be clerk; and, in my opinion, in the case named by you, it is permissbile and proper to draw the warrant, as suggested, and make it payable to "Clerk of Circuit Court of Dallas County, Alabama.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell·K
February 11, 1928.

Hon. John Brandon,
Secretary of State,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of February 7th., together with enclosure from Lincoln Life Insurance Company, asking for the following information:

"Referring to your circular letter of December 10th., and to the certificate of application of Domestic corporations for permit to transact business in Alabama in accordance with Section 43 of the Revenue Law of the last Legislature.

"Since Domestic Life Insurance Corporations are already paying a privilege tax of $101.00 and since we have been unable to get a copy of this Legislature laws, I am writing to ask or not this is applicable to Domestic **Life Insurance** Corporations, and if so does it repeal the privilege tax such companies have heretofore paid of $101.00?

"I will genuinely appreciate prompt advice, as we have only a few days more for filing this statement without penalty if it applies to legal Reserve Life Insurance Domestic Companies."

This is to advise you that under Section 43 of the Revenue Act approved July 22, 1927, every domestic corporation is required to obtain from the Secretary of State a permit when it is organized and annually thereafter, before any such corporation is authorized to do business in this State, and pay to the Secretary of State the fee provided in Section 43, supra, before the 1st. day of February of each year.

I am, therefore, of the opinion and so advise, that, this permit fee is in addition to all other business and privilege taxes required to be paid by law.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans.B
February 11, 1928.

Hon. John S. Turner,
Commissioner of Maintenance, Highway Department,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of February 9, 1928. You wish to have our opinion as to whether or not it is permissible, under the law, to operate a truck over the highways of Alabama of greater aggregate weight. truck and load, than ten tons.

In reply will say that section 17 of the Revenue Act, 1927, contains, among other provisions, the following: "Provided it shall be unlawful to operate over the public roads of this State any vehicle whose aggregate weight, including load, is more than ten tons."

It is contended, as I understand it, that this provision, in the first place, is void as being unconstitutional, and, in the second place, if originally valid, it was repealed by the adoption of the Highway Code.

In answer to the first contention, will say that, in our opinion, it was perfectly constitutional to put the quoted provision in section 17 of the Revenue Act. This Act provides for license on trucks that are permissible on the public roads and provides what trucks are not permissible on the public roads. It is my opinion that in such a classification for revenue it is competent to do directly what could easily have been done indirectly, viz: put a license of one hundred thousand dollars on truck having an aggregate weight of over ten tons. It seems clear to me that the public roads might be protected by a prohibitive license, and also that it might be provided, in a license classification, that trucks above certain weight should be prohibited on the public roads.

In answer to the second contention will say that I find no specific provision in the Highway Code repealing the proviso of said section 17, and there is, in my opinion, no conflict between any provision of said Code and said section 17.

We, therefore, advise that section 17 of said revenue law is a valid enactment and that none of its provisions are repealed by the adoption and approval of said Highway Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Note: See opinion Oct. 19, 1928.

Written by Judge Evans:K
February 16, 1928.

Hon. C. E. Thomas,
Superintendent of Banks,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of February 7th. You ask for an opinion upon the effect, if any, the amending of section 7099 of the Code

by section 3 of Act. No. 375, Acts 1927, page 433, had upon section 7101 of the Code. Section 7101 of the Code reads as follows:

> "No building and loan association, not organized under the laws of this State prior to February 7, 1893, shall pledge, hypothecate, or transfer any note, bond, mortgage or securities which the association may obtain for money loaned or otherwise."

Section 7099, as amended, contains the following among other provisions, not necessary to be considered, viz:

> "A building and loan association shall have the following powers: * * *; (c) to acquire, hold, enjoy, convey and otherwise dispose of real and personal property, needed in the operation of its business; * * * To borrow money; to lend money to its members only; to execute negotiable notes, bonds and other evidences of indebtedness; to issue investment certificates, to receive deposits, and to enter into all other kinds of contracts appropriate to accumulating a fund for making loans;" etc.

For two very good and sufficient reasons, as it appears to us, it is our opinion that the amended section 7099 in no way affects the validity of section 7101.

The first of these reasons is that while several sections, including section 7099 of Article 17 of the Code were amended by the Act in question, section 7101 was allowed to stand as it was. Repeals by implication are not favored in construing statutes. Especially is this the case where the two supposed conflicting sections are parts of a whole, as here—both sections being parts of Article 17 of the Code. In such a case the sections must be considered, if possible, as **in pari materia.** When a field of operation can be found for each section, as the statute stands after the amendment, no repeal of the unamended part will be considered as effected by the amendment when there is a field for operation of both provisions. In this case there is a field for both. There are certainly "kinds of contracts appropriate to accumulating a fund for making loans," other than those prohibited by section 7101.

The second of these reasons is that the Legislature determined by section 7101 that the pledging, hypothecating or transferring of notes, bonds, mortgages or securities which the association has obtained for money loaned or otherwise, are not "contracts appropriate to accumulate a fund for making loans."

We are, therefore, of the opinion that section 7101 of the Code is still the law, unaffected by the amendment in question.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
February 16, 1928.

Hon. James H. Pride,
Solicitor, 23rd District,
Huntsville, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of December 12, 1927. You write as follows:

> "I am in receipt of your letter drafted by Mr. Brassell on December 9th wherein he undertakes to answer my letter relative to collection of solicitor's fees.
>
> "Cases frequently come to our attention where we feel that it would be the best interest of the State to nol prosse the case upon payment of the clerk and sheriff's fees by the defendant, but the clerk of the circuit court has been instructed by some one of the examiners that this cannot be done unless the solicitor's fees are paid also. Your Mr. Brassell referred me to Section 3738, which says: Solicitors fees must be paid 'on conviction.' I do not understand that a man is convicted when he agrees to pay the clerk and sheriff's fees in order that the prosecution may be nol prossed, and we wish to know upon what theory the State feels that the solicitor's fee should be paid in a case of this kind. Of course we understand thoroughly that on conviction the solicitor's fee must be paid."

In answering your inquiry, I again call your attention to Section 3738 of the Code, also sections 3739, 3740, 3741, 3758 and 3759. These sections are to be construed in **pari materia.**

Nolle prosequi means an entry made on the record, by which the prosecutor or the plaintiff declares that he will proceed no further. **Cyclopedic Law Dictionary.**

Costs may be defined as follows:

> "A pecuniary allowance made by positive law to the successful party to a suit, or to some distinct proceeding in a suit in consideration of, and to reimburse, his probable expense."
>
> "At common law, there were no costs by name, but when the plaintiff failed, he was amerced for presenting a false claim, and when the judgment was rendered against a defendant, he was fined for resisting the just claim of the plaintiff."

When a **nolle prosequi** is entered no costs are taxed.

> "Costs as allowed by statute in modern practice are the amount allowed the prevailing party in lieu of the common law fines."
>
> "A 'fee' is a reward or wages given to one for the execution of his office."

Fees differ from costs in this, that the former are, as above mentioned, a recompense to the officer for his services; and the latter, an indemnification to the party for money laid out and expended in his suit. See Cyclopedic Law Dictionary. A crime may be defined as "Any act or omission pro-

hibited by public law for the protection of the public, and made punishable by the state in a judicial proceeding in its name.

Cyclopedic Law Dictionary.

It would be against public policy to hold that, as a condition precedent, the Solicitor on the part of the State could nol prosse a criminal case if the defendant would pay the clerk's and sheriff's fees.

No provision is made for the payment of fees arising from criminal cases, in which the defendants are not convicted.

Hawkins ex. rel. F. P. O'Brien v. State, 124 Ala. 102.

The law of fees and costs, in criminal cases, must be held to be a penal law, and to be strictly construed; and no officer is entitled to any fee, unless his right thereto is fixed by law.

See section 3734 of the Code.

Board of Revenue and Road Commissioners of Mobile County v. State ex rel Drago, Sheriff, 172 Ala. 155.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
February 17, 1928.

Hon. T. J. Douglass,
Justice of the Peace,
Jeff, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of February 14th. You want to know whether or not a justice of the peace has final jurisdiction for violations of the Highway Code.

From a careful reading of the Highway Code, I am constrained to hold that it was not the Legislative intent to confer final jurisdiction upon justice of the peace for trial of violations of the "Highway Code."

I think that it was the Legislative intent that cases arising under the Highway Code, should be tried in the county court, or should a person violate any of its provisions, he could be prosecuted in the Recorder's court, if the offense is committed in an incorporated town or within the police jurisdiction thereof.

Ex Parte Williams, 91 South. 914.

I am of the opinion that a justice of the peace is without final jurisdiction of offenses enumerated in the Highway Code. However, he could, for any offense, under the Highway Code, issue a warrant upon an affidavit being made, and hold a preliminary hearing, and if probable cause existed from

the evidence hold such person so charged to await the action of the grand jury, or in lieu thereof, issue a warrant returnable to the county court.

I therefore, advise you that, you as justice of the peace, have only preliminary jurisdiction of all offenses under the Highway Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:ML
February 23, 1928.

Hon. L. C. Wilkinson, J. P.,
No. 1 North Dallas Avenue,
Huntsville, Alabama.

Dear Sir:

This is to acknowledge the receipt of your letter of January 21st, in which you inquire whether or not a justice of the peace has jurisdiction of the offense of reckless driving on a State Highway.

I do not find that the Code of 1923 or the Highway Code of 1927 conferred upon you, as justice of the peace, jurisdiction of the offense to which you refer.

You have only such criminal jurisdiction as has been expressly conferred upon you by statute. Of course, you have **preliminary** jurisdiction of all offenses. You may act as a committing magistrate even though the offense were a felony.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:ML
February 23, 1928.

Hon. J. A. Embry,
County Solicitor,
Ashville, Alabama.

Dear Sir:

This is to acknowledge the receipt of your letter of the 15th inst.

You inquire whether or not you may at one, and the same time hold office as member of the Board of Education of your county and county solicitor.

The county solicitor holds a civil office of profit. A member of the Board of Education also holds a civil office of profit.

Jackson vs. Sherrod, 92. So. 481.
Opinions Attorney General, 1st series, p 62.

Report Attorney General, 1924-26, p. 294.

One may not at one, and the same time, hold two civil offices of profit under this state or a county thereof.

Section 280, of the Constitution, 1901.

Therefore your inquiry must be answered in the negative.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
February 23, 1928.

Hon. W. W. Brandon,
Judge of Probate, Tuscaloosa County,
Tuscaloosa, Alabama.

Dear Sir:

This acknowledges receipt of your letter of February 6th. You write as follows:

"Please inform us whether under Section 74 of the Revised Tax Law, the Probate Judge may enforce a lien for State and County licenses on business license.

"We are referring to worthless checks given for same."

In reply will say that where a person obtains what purports to be a license, by giving a worthless check to the Judge of Probate for such written instrument, he has, in law, not obtained a license. The writing, in my opinion, is mere evidence of the license which can, in fact and in law, be obtained only by paying to the Judge of Probate the amount of money required by law. The written or printed instrument, purporting to be a license, is not a license when obtained by fraud. In such a case, by all means, the party so acting should be prosecuted for doing business without a license. When he pleads not guilty and offers such instrument in evidence, proof of the manner in which the instrument was obtained, would destroy its effect as a license.

In such a case, if you do not want to prosecute, the solicitor may sue for the money due for license and enforce the lien of the state and county provided for under Section 74 of the Revenue Act of 1927. We have no provision of law, that I recall, for the transference of this license to anyone. I do not think that the Judge of Probate can pay the license of anyone and be subrogated to this lien.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
February 24, 1928.

Hon. S. M. Cobb,
Circuit Clerk,
Camden, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of February 17th. You write as follows:

"Please advise me if the Highway Code requiring fines to be sent to State Highway Commission covers violations on all of the roads of the county, or is limited to violations on State built roads."

In answering your inquiry I desire to call your attention to Section 106 of the Highway Code, which reads in part as follows:

"Section 106. Fines and Forfeitures. All fines and forfeitures collected upon conviction or upon forfeiture of bail of any person charged with a violation of any of the provisions of this Article constituting a misdemeanor, shall be within thirty days after such fine, or forfeiture is collected forwarded to the State Treasurer. All amounts received from such fines or forfeitures shall be credited to the funds of the State Highway Department, for the maintenance of roads and bridges. Failure, shall constitute misconduct in office and shall be ground for removal therefrom. Provided, that all fines and forfeitures collected by Recorders' Courts or other municipal courts for violation of ordinances, in cities and towns of over two thousand population according to the last or any subsequent census, whether for acts constituting violations of the provisions of this article or not, shall be paid into the Treasury of such municipality in which the same was collected."

I, therefore, advise you that, all fines collected upon conviction of any person charged with a violation of any of the provisions of the Highway Code constituting a misdemeanor must within thirty days after they are collected be forwarded to the State Treasurer. Except fines and forfeitures collected by Recorders' or other municipal courts for the violation of ordinances, in cities or towns of over two thousand population according to the last or any subsequent Federal census.

I further advise you that the provisions of the Highway Code apply to the entire State.

See Section 106, Acts of 1927, page 390.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
February 24, 1928.

Mr. Edward L. Colebeck,
Superintendent of Education, Hale County,
Greensboro, Alabama.

Dear Sir:

This is to acknowledge receipt of your letter of February 1st. You wish to know if a school district which has heretofore voted for the three mill district school tax for a period of time extending to 1932, can now hold an election to prolong this period ten years further.

Replying will say that the Constitution gives to the several school districts of every county in the State the power "to levy a special district tax not exceeding thirty cents on each one hundred dollars of taxable property in such district for public school purposes, provided that the rate of such tax, **the time it is to continue** and the purpose thereof shall have been first submitted to the vote of the qualified electors of the district and voted for by a majority of those voting at such election; provided, further, that no district tax shall be voted or collected except in such counties as are levying and collecting not less than a three mill county school tax."

In my opinion, it is not intended by the Constitution to vote on a period of time beginning at some future date. The power to levy the tax is given by the Constitution to the school district; but this power is held in abeyance by the Constitution until an election is held and a majority vote is cast for its exercise. The questions voted upon are: 1st, "the rate of such tax;" 2nd, "the time it is to continue," and 3rd, "the purpose thereof." When these questions have been decided affirmatively by the election, the right to exercise the power conferred by the Constitution begins, and continues during the time specified for it to continue. Such being the case, it is my opinion that no second election can be held until the expiration of the time, fixed by the first election for the continuance of the exercise of the power, has ended. The vote is on the length of time the exercise of the power is to continue. This clearly means, in my opinion, the length of time from the date of the election. When the rate of such tax, the time it is to continue, and the purpose of the tax has been determined by the election, the right of the school district to exercise the power given it by the Constitution begins, and this right continues during "the time it is to continue" named on the ballot. To give the Constitution any other meaning than the foregoing would, in my opinion, be judicial legislation, and would, in my opinion, create a situation of doubt and perplexity. If the time for the beginning of the exercise of the power can be fixed by vote, it certainly is not provided for in the Constitution and would, in my opinion, violate the letter and intent of the Constitution.

If such can be done, we immediately begin to speculate as to how far in the future can the beginning of the period of time be placed? Can you keep on holding elections indefinitely and voting on a period at a time to see how much the people will stand for before a period already voted has expired?

I am of the opinion that the school district has no legal authority to hold another election, while the right to make the levy exists under a former election.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
February 24, 1928.

Hon. Willard McCall,
Special Assistant Attorney General,
Birmingham, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of February 16, 1928. You write as follows:

> "Under the Revenue Act of 1923, a corporation organized under the laws of the State of Alabama must pay to the State of Alabama franchise tax of $1.00 per $1,000.00, on its capital stock.
>
> "Please advise me if a corporation organized under the laws of the State of Alabama, incorporated on March 25, 1924, for $2,000 and paid its franchise tax to the State of Alabama in amount of $2.00, would be required to pay an additional franchise tax on its capital stock, provided the said corporation on October 23, 1924, increased its capital stock to $15,000,000.00.
>
> The Birmingham Electric Company on March 25, 1924, incorporated as a domestic corporation in this state, for $2,000.00, divided into twenty shares, and paid to the State of Alabama franchise tax of $2.00. On Oct. 25, 1924, the said Birmingham Electric Company increased the number of shares to 1,750,000, without nominal par value, $75,000.00 being preferred stock and 1,000,000 being common stock, without nominal or par value. In paying the additional charter tax to the Probate Judge of this county they paid $15,000.00 additional during the year 1924, based on the value of the stock as provided under Section 7012 of the code of 1923, and stated in their affidavit that the property was worth $15,000,000.00.
>
> Please let me know if they will be required to pay franchise tax on $15,000,000.00 in addition to the $2.00 they had theretofore paid on March 25, 1924."

In answer to your inquiry I beg to advise that Section 10 of the General Revenue Acts of 1923, provides that every corporation organized under the laws of this State except strictly benevolent, educational or religious corporations had to pay an annual franchise tax of sixty cents on each $1,000.00 of its capital stock. This act was approved August 22, 1923, and by an act approved Sept. 13, 1923, Section 10 of the hereinbefore referred to act was amended and provides that each corporation should pay annually to the State a franchise tax of $1.00 on each $1,000.00 of its capital stock.

The General Revenue Bill of 1927 by Section 53 provides:

"Every corporation organized under the laws of this State, except strictly benevolent, educational or religious corporations, shall pay annually to the State an annual franchise tax of $2.00 on each $1,000 of its capital stock."

It is my opinion, and I so advise you, that the Birmingham Electric Company should be required to pay the franchise tax on its increased capital stock, which you state to be $15,000,000.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
February 25, 1928.

Hon. W. E. Merrell,
President, Board of Revenue,
Columbiana, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of February 15th. You write as follows:

"Please refer to Section 157 et seq. Revenue Code, 1923, and advise us whether or not it is necessary for all members of the Board of Revenue in their capacity as members of the Board of Review to be present at the sessions of the Board of Review.

"Section 154 of the Act appears to fix the compensation of members of the Board of Revenue acting as a Board of Review at double the amount per diem authorized to be paid to members of the Board of Revenue, which will be $40.00 per day while the five members are in session; and it is our observation that this expense is unnecessary and that the attendance of the full Board is not required to transact the business of the Board of Review."

In answer to your inquiry will say that you will find in Section 50 of the Revenue Act 1923, (Acts 1923, page 180, near top of page) the following: "The majority of the Board of Review shall constitute a quorum of such board for the performance of the duties required herein," etc. It seems, therefore, clear that when a majority of the Board of Review is present, such majority may perform any duty conferred upon it by law.

Further answering your letter will say that a member when sitting as a member of the Board of Review draws the same pay that he draws when sitting as a member of the Board of Revenue or of the Court of County Commissions. When he is sitting as a member of the Board of Review he is not sitting as a member of the Board of Revenue, and hence does not draw pay for such time for sitting as a member of the Board of Revenue. It will be noticed that compensation for members while sitting as a Board of Review is allowed only where the pay for sitting as a Board of Revenue is a

per diem pay. The per diem pay while sitting as a member of the Board of Review is in addition to the per diem pay while sitting as a member of the Board of Revenue, but the two Boards can never sit at the same time or draw pay for the same time. The per diem pay is the same no matter in which capacity the members sit, and the per diem pay received while sitting as a Board of Review is in addition to the pay received while sitting as a Board of Revenue. It will be noticed, on reading said section 52 that where members of Boards of Revenue or Courts of County Commissioners are paid salaries by the month or year, no additional pay is allowed for sitting as a Board of Review. In such a case, pay for their full time being already provided for, no additional pay is allowed when sitting as a Board of Review. On the other hand, where pay is only for the day's work, when sitting as a Board of Revenue, the same amount of pay per day is allowed each member when sitting on the Board of Review; and the pay he receives when sitting on the Board of Review is in addition to the pay he receives when sitting on the Board of Revenue.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:LM
Feb. 25, 1928.

Hon. J. I. McClure,
Judge of Probate, Lauderdale County,
Florence, Alabama.

Dear Sir:

I have your letter of recent date in which you state that you desire to have me as Attorney General construe for you section 254 of article 24 of the Agricultural Code adopted by the 1927 legislature. You also state that the particular point on which my advice is required is as to the validity of that provision of the section in question which limits to certain specified weight bread sold in Alabama.

The Agricultural Code of 1927, article 24, section 254 is in part as follows:

> "The standard loaf of bread manufactured for sale, sold, offered, or exposed for sale in the State shall weigh one pound avoirdupois, but bread may also be manufactured for sale, sold, offered, or exposed for sale in loaves of one-half pound, one pound and a half, multiples of one pound, but shall not be manufactured for sale, sold, offered, or exposed for sale in other than the aforesaid weights."

There are two questions to be considered in passing upon the validity of the above provision.

1. Did the legislature have the right to enact such a law?
2. Was such law validly enacted?

That the legislature had the right to enact such a law appears to be clear, as is shown by the following:

3 Ala. Reports 137, Mayor and Aldermen of Mobile v. Yuille.
200 Ala. Reports 492, Tallassee Oil Fertilizer Co. v. Holloway.
207 Ala. Reports 569, State v. Goldstein.
243 Illinois Reports 167, City of Chicago v. Schmidinger.

226 U. S. Reports 578, Schmidinger v. City of Chicago.

We are now confronted with the question of the validity of the enactment of the law in question.

The above provision of section 254 is new legislation in this state, therefore, the question of whether it was validly enacted or not is to be answered by looking to the method in which the Agricultural Code of 1927 was adopted.

The General Acts of 1927, page 60 contains the act which provides for the codification of all public statutes pertaining to agriculture and industries and related subjects.

The General Acts of 1923, page 99, contains the act which provides for the reading and revising of the agricultural code.

The General Acts of 1927, page 324, contains the act adopting said code.

It is to be observed that said code was adopted in the same manner as the Code of Alabama of 1923 and previous general codes. Since this is true, can it be said that any new matter which was incorporated in the agricultural code of 1923 become law by reason of such incorporation and subsequent adoption of the code?

Our Supreme Court has held that a code adopted as the code of 1896 is a body of laws duly enacted, so that laws which previously existed cease to be law when omitted from said code, and additions which appear therein become law.

The opinion of the case of State v. Towery, 39 So. 309, contains the following:

> "It is the settled law of this state that the Code of Alabama adopted as was the present code of 1896, is not a mere compilation of the laws previously existing, but is a body of laws duly enacted, so that the laws previously existing cease to be law when omitted from said code, and additions which appear therein become the law from the approval of the act adopting the code."

In the case of Gibson v. State, 106 So. 231, headnotes 3 and 4, we find the following:

> "The subject matter constituting the basis of a code as defined in our constitution is the existing statutory law. In keeping with this intent, our acts for the preparation of a Code usually direct the commissioner to make reports of all changes made in course of revision, and to prepare separate bills for any distinctly new legislation which he may recommend. For obvious reasons, this is the proper course. **Any new matter, however embodied in the code is by, the act adopting the code, enacted into law."**

The opinion in the above case of Gibson v. State, headnotes 1 and 5 also contain the following:

"In view of the cumulative constitutional provisions touching the titles of acts, amendments thereto, and the course of procedure through the legislature, all intended to acquaint the members with the substance and effect of pending legislation and impose a responsibility upon each member in casting his vote thereon, we are impressed the exception of a bill "adopting" a code was and is limited to the class known as such in the constitutional and legislative history of the State."

"***A bill to 'adopt' a code directs the attention of the legislature elsewhere for the contents of the Code. A bill to enact into law the matter set forth therein must, by its title, direct the legislator's attention to the subject of legislation in the manner declared by section 45. Any other rule would invite evasion of the constitution by the expedient of naming the act a code, or, if not so entitled, make its validity to depend upon whether it is such a compilation and revision of laws as to come within the legal definition of a code."

In rendering the opinion in the Gibson case our supreme court had in mind what is known as the Agricultural Code of 1923. It will be observed that such code was not adopted in the usual manner in which codes are adopted but was enacted as an original bill. In view of what was said in the Gibson case, however, the question arises as to whether or not new matter which is incorporated in a special code, such as the Agricultural Code of 1927, becomes law by the act adopting the code just as new matter which was incorporated in the Code of Alabama of 1923 and other general codes became law by the acts adopting such codes.

We can see no good reason why such new matter incorporated in the Agricultural Code of 1927 should not become law. The method of adoption was precisely the same as that of general codes and what the court said in the Gibson case about a bill to "adopt" a code directing the attention of the legislator elsewhere for the contents of the code is equally as true in the case of a special code as it is in the case of a general code.

It may be insisted that any new matter incorporated in the Agricultural Code of 1927 could not become law, because the act which provided for said Code contains the provision that the commissioner shall prepare the code without changing the intent of the law maker. (See General Acts of 1927, page 61, Section 2.) We find, however, that the commissioner was required to file with the governor a sworn statement showing all changes he shall have made, and the statement showing such changes was submitted by the governor to the legislature (See General Acts of 1927, page 61, Section 5.) It is also to be observed that a joint committee was appointed to revise, amend and correct the agricultural code of 1927. (See General Acts of 1927, page 99.) **And that the Legislature adopted such code after revision, amendment and correction by the joint committee.** (See General Acts of 1927, page 324.)

In view of the above, it is my opinion that the provision of the Agricultural Code of 1927 regulating the size of loaves of bread is a valid law and that it should be given full force and effect.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
Feb. 28, 1928.

Hon. Woolsey Finnell,
Highway Director,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of February 25. You write as follows:

"Will you kindly advise this office if a State Highway Contractor is responsible for the debts incurred by a sub-contractor working directly under the general contractor, such as feeds, groceries and other supplies as covered by contract and bond of the State Highway Department, and under the provisions of the State Highway Code.

"There is a provision in each contract and bond requiring the original contractor to pay all items hereinbefore mentioned and this Commission does not deal with any sub-contractor."

This is to advise you that under Section 28 of the Highway Code, and from the facts submitted by you, the original contractor is liable for the debts incurred under the contract. And when the original contractor sublets any part of his project, the provisions in the statute, hereinbefore cited, as well as the provision in the contract bind him as well as the sub-contractor, and each of them are liable, as well as the sureties on the bond of the original contractor.

See Union Indemnity Company v. The State of Alabama for the use McQueen Smith Farming Company. Decided Nov. 10, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:ML
February 28, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of February 20th. You write as follows:

"Please refer to Local Acts of the Legislature 1923, page 68, Act. No. 152, Senate Bill 268, and inform me, (1) whether or not this Act is Constitutional. (2) If, in your opinion, the Act is Constitutional has the Judge of the Court of Common Pleas of Selma any authority or any power under the law to delegate his authority to anyone else to take complaints, to sign jurats, to issue warrants or to sign commitments or mittimuses of prisoners to jail. (3) Referring particularly to Section 4802, Volume 2, Code of Alabama 1923, please advise whether or not a person in the jail of Dallas County who is placed therein by the Sheriff

on a warrant and affidavit, the jurat to the affidavit and the warrant of arrest not being signed by the Judge of the Court of Common Pleas of Selma, but his, the Judge's name, signed thereto by the Sheriff of the County or by one of the deputies of the County, is legally confined to jail or **legally** committed thereto, and has the Sheriff in such an instance the right to charge the State of Alabama for feeding such person or is the State of Alabama liable to the Sheriff for the feeding of such person.

"I am informed that it has been the practice in Dallas County and in Selma for the Sheriff and his deputies to round up a lot of misdemeanants possibly engaged in 'crap shooting or gaming,' or being a common vagrant, drunkeness or disorderly conduct, etc., ——— say on Saturday evening or Saturday night, and take such misdemeanants to jail and bring them before the Judge of the Court of Common Pleas of Selma on Tuesday following for trial. I am further informed that it is evident, in numbers and numbers of cases, that the Sheriff or his deputies would fill out all the papers including the complaint and signature of the prosecutor, the jurat of the Judge, and fix the Judge's name to the warrant of arrest, and it was on such prepared papers that the case was brought to trial."

"In other instances all these papers would be prepared, say Saturday, and brought to the Judge's attention on Tuesday and the Judge would sign his name to the jurat and the warrant of arrest. I ask particular advice on this proposition. These persons being charged with misdemeanors in cases where the Sheriff arrested them, possibly in the committing of an offense without a warrant of arrest, was there any authority on the part of the Sheriff to confine said prisoners in jail before having taken them before the Judge of the Court of Common Pleas of Selma, or before some other magistrate? Did the Sheriff of Dallas County have authority under the law to tax the State of Alabama and demand from the State payment for the feeding of such persons for such period, from Saturday to Tuesday morning? The Judge of the Court of Common Pleas of Selma having only the authority conferred upon Justices of the Peace, was there any authority to commit any persons to jail on a warrant of such Judge even regularly made out and signed by him without the persons arrested on such process having been brought before the Judge of the Court of Common Pleas of Selma? In other words is there any authority for the Sheriff confining a person in jail on a warrant of a Justice of the Peace in a misdemeanor case without the person having been brought before such Justice of the Peace and a mittmus duly issued to the Sheriff? In those instances where the Sheriff has filled out all the papers, if in your opinion such persons in jail committed under such papers were not committed 'by authority of law' (see sub-division 7, Section 4802 Criminal Code above referred to) was the Sheriff legally entitled to receive pay for feeding such persons in jail, and if not, is he liable on his official bond to the State of Alabama for a refund of such money so collected?

"Calling your attention again to the Local Act, the Constitutionality of which I have asked you to pass upon, if you determine the same to be constitutional has the Judge of the Court of Common Pleas of Selma,

clothed as he is under the Act with no more authority than a Justice of the Peace, any authority to sentence any person convicted in his court to hard labor for costs?

"Your early attention to this matter will be greatly appreciated as there is an Examiner of Accounts now detailed on the investigation of the Sheriff's office of Dallas County and your opinion is needed for immediate guidance of the Examiner."

Answering your first inquiry relative to the Constitutionality of an Act creating an inferior court for precinct 36 in Dallas County. Local Acts 1923, page 68. I am of the opinion that the Legislature complied with Section 168 of the Constitution in establishing this court in lieu of justice courts.

State ex rel. Griswold vs. Lea, 99 South. 170.

In answer to your second inquiry I wish to call to your attention Section 42 of the Constitution, which reads as follows:

"The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, towit: Those which are legislative, to one; those which are executive, to another; and those which are judicial to another."

The separate departments of the government for the exercise of the legislative, executive, and judicial powers are termed checks and balances of the republican form of Government. Upon judicial action there is the Legislative check and the power of the latter to prescribe rules for the courts and to restrict authority, and the executive check upon the judicial to refuse to enforce judgments which are in excess of the jurisdiction. Upon the executive power is the legislative check, to restrain the action of the former, and upon it is the judicial check of the power to punish the executive department for excess of executive authority.

Cooley Const. Lim. 44, Ex parte Screws, 49 Ala. 57.

It is obvious that the judiciary declares what the law is, and the legislature what it shall be.

In this connection I quote Section 43 of the Constitution:

"In the government of this State, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men."

The legislature has no power to dictate to the judiciary how a law shall be construed.

Lindsay vs. U. S. Co. 120 Ala. 156.

I, therefore, advise you that the Judge of the inferior court of Precinct 36 in Dallas County cannot delegate his powers to anyone, and that the Sheriff is without authority to sign the name of the Judge of said court to any affidavit warrant or commitment. And if he should so sign the name of the Judge of said court to any commitment and imprison a person, such would constitute illegal imprisonment.

See Section 4802 of the Code.

The Sheriff has the authority to arrest without a warrant for a misdemeanor committed in his presence, but when he, arrests without a warrant he must forthwith take the person arrested before a magistrate, who shall admit him to bail, or if the person so arrested cannot furnish the necessary bail, the magistrate then commits him to jail.

I am of the opinion that the Sheriff is not entitled to be paid for the feeding of prisoners that he has illegally imprisoned in the jail of Dallas County.

I further advise you that the Judge of the Inferior Court of Dallas County has only the powers that the justices of the peace had in precinct 36 of said county, no more and no less, and that he cannot sentence under the Act creating said court to hard labor for costs.

Roden vs. State, 73 So. 657.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Feb. 28, 1928.

Hon. S. M. Dunwoody,
Commissioner of Agriculture,
Capitol.

Dear Sir:

Your inquiry of February 28, 1928 to hand. You wish our interpretation of Section 194 of the Agricultural Code as to what is included therein as paints. Said Section reads as follows:

> "The term 'paint' as used in this article shall include white lead in oil or any compound intended for the same use, paste or semi-paste, and liquid or mixed paint of any kind ready for use, or any compound intended for the same use."

In reply to your inquiry will say that the distinction between paint and varnish as given by Circular of the Bureau of Standards No. 69 U. S. is as follows:

> "In general, paint and varnish are applied to surfaces for decoration or protection, or both. The principal distinction between paint and varnish is that paint contains in suspension an appreciable amount of material, known as the pigment, which is substantially insoluble in the liquid portion, known as the vehicle. Varnish, on the other hand, consists of a

liquid in which any resins or waxes present are mostly in solution. The liquid portion of a paint—that is, the vehicle—usually contains a number of substances, which for convenience may be divided into two classes. Those which are volatile in a current of steam at atmospheric pressure constitute the "volatile thinner"; while the rest of the liquid portion is designated as the "nonvolatile vehicle."

It is our opinion that the word "paint" as used in said section of the Agricultural Code would include all substances falling under the definition of the word "paint" as defined in said U. S. Circular, and would include any substance in which an insoluble or suspended pigment is used to cover surfaces for protection, decoration, or both, although the vehicle used for carrying such pigment be a varnish or other vehicle.

The word "paint" as used in said Section 194 of the Agricultural Code does not include pure varnish, or oils or turpentine or other liquids which do not contain an insoluble or suspended pigment.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
Feb. 29, 1928.

Mr. B. E. Kelly,
Tax Assessor,
Abbeville, Alabama.

Dear Sir:

This acknowledges receipt of your letter of February 20. You write as follows:

"I would be glad to have your opinion on the following: I understand that all property brought into the State between the first of October and the 4th Monday in March is subject to taxation. Suppose a farmer having made his tax return in November or December buys a pair of young mules and wagon. Should he also come and make a return of the last mentioned property.

Please give me a ruling as to houses that are built since the 1st of October."

In reply will say that the mules mentioned by you are taxable, but should be taxed to the first owner in the State. When so assessed the lien follows the property no matter how often sold or transferred; and, if the taxes can not be made out of the original owner in this State, the lien of the State and County may be enforced against the property wherever found in the State. The assessment of such property would not be proper, during the then current assessment year, to anyone except the owner who first brought such property into the State. If a mule dealer brings the mules into the State after the first day of October and before the fourth Monday of the succeeding March, then such mules should be assessed to such dealer in the county

where he does business—he being the first owner in the State.—Proctor v. State, 215 Ala. 6.

Such mules should not be assessed to a subsequent purchaser, unless he gives them in to be assessed to him.

In the case of wagons, they are but ordinary merchandise and are assessible as merchandise stock when in the hands of a dealer in wagons. They should be considered when the merchandise stock assessment next is made. If a farmer buys a wagon in another state and brings it into this state between October 1st and the last Monday in March, it should be assessed to him.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:ML
March 1, 1928.

Hon. Woolsey Finnell,
Director of Alabama Highways,
Montgomery, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of February 27th, 1928, in which you ask to be advised on the following matter:

"Has the Highway Department the right to use highway funds for the payment of construction and erection of grade crossing signs as contemplated in Section 52 of the Highway Code."

I am of the opinion and so advise that under Section 52 of the Highway Code it is the duty of the State Highway Commission to designate dangerous grade crossings, steam or interurban railways by highways, and shall erect signs there notifying drivers of vehicles upon any such highway to come to a complete stop before crossing such railway. The statute having placed this duty on the State Highway Commission necessarily carries with it the expenditure of its funds for such purpose. However, these signs should be erected on "Highways" as defined in Article 2, Section 47, subdivision N of the Alabama Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:ML
March 1, 1928.

Hon. John D. McNeel,
Chairman, State Tax Commission,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of November 23rd. last. You write as follows:

"This Commission asks to be advised whether or not that part of

House Bill 359, approved July 22, 1927, included in Section 44-52, inclusive, is in accordance with the provisions of the Constitution of this State.

"In placing in operation the above mentioned Sections there has been a question raised as to whether or not the list of securities so described must be filed each year to obtain the exemption from ad valorem tax. Subsection (d) of Section 51 provides: '(d) There shall be no advalorem tax assessed or collected—either for the year in which listed or for any preceeding year.' We take this to mean that unless the list is filed each year there will be no exemption from ad valorem tax except for the year in which such list is filed and the preceding years."

"Shall the list be filed every year to obtain the exemption from ad valorem tax accorded in Subsection (d)?"

"We would have you give us your opinion both as to the constitutionality of this law and as to the exemption from ad valorem tax above described."

In reply will say that I am of the opinion that Sections 44 and 52 both inclusive of said House Bill No. 359 are constitutional.

Furthermore, I am of the opinion that it requires an annual filing and recordation in order to exempt such securities from ad valorem taxation. When the law is read as a whole, it shows no intention to exempt such securities from **ad valorem** taxation after October 1, 1927, except for the tax year in which recorded. This would require an annual recordation after October 1, 1927, to exempt such securities from taxation. When recorded in the tax assessment year beginning October 1, 1927, such recordation has the effect of exempting such securities from tax assessment for such assessment year and of preventing assesment for ecaped taxes of prior years and of preventing collection of taxes assessed on such securities and otherwise due and payable October 1, 1927.

The opinion rendered by this office of date of October 4, 1927, so far as it holds that taxes assessed for the assessment year beginning October 1, 1926, and due and payable October 1, 1927, are collectable, notwithstanding such recordation as of October 1, 1927, is overruled.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:ML
March 1, 1928.

Hon. A. J. Longshore,
Justice of Peace,
Cedar Bluff, Alabama.

Dear Sir:

This is to acknowledge the receipt of your letter of February 20th. You inquire whether or not you are or would be prohibited by law holding the office of Justice of the Peace and serving at the same time as a member of the County Board of Education.

This office has repeatedly held that a member of the County Board of Education is an officer and holds an office of profit within the meaning of Section 280 of the Constitution and Section 2575 of the Code of 1923.

Report Atty. Gen. 1924-26 p. 234.
Report Atty. Gen. 1924-26 p. 294.

Unquestionably, a Justice of the Peace holds an office of profit.

It is true that the **Constitution,** Section 280, does not prohibit a Justice of the Peace holding two offices of profit at the same time. However, Section 2575 of the Code of 1923 provides that no person shall hold two offices of profit at one and the same time under this State, except **Notaries Public.** This provision of statute is tantamount to a direct prohibition against a **justice** of the **peace** or any other officer except notaries public holding two offices of profit at the same time.

The Constitution of this State is only a limitation upon the power of the legislature to enact laws. Unless that power is restricted by the Constitution the legislature may enact such laws as it sees fit. The Constitution does not by Section 280 prohibit a further restriction, by the legislature, of the qualification of the office holders.

It has been held that the legislature may define the qualifications of office holders.

State ex rel Goodgame, 153 Ala. 646.

Section 2575 of the Code of 1923, has been by the Supreme Court of this State recognized as a valid exercise of legislative authority.

Shepherd vs. Sartain, 185 Ala. 439.

It is my opinion that the further restriction against an officer holding two offices of profit at the same time, imposed by Section 2575 of the Code of 1923, is entirely within legislative competency. This provision of the Code will prohibit you holding both of the offices to which you refer at one and the same time.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:ML
March 1, 1928.

Hon. J. C. Weldon,
Tax Collector,
Wetumpka, Alabama.

Dear Sir:

Your letter of February 22nd has been received by this office.

You make the following inquiry:

"Section 3036 of the 1923 Code provides for Compensation of the several Tax Collectors for making list of poll tax payments and provides that they shall receive 'two and one half cents for each name so

entered,' and I write to inquire whether this means that they shall receive 2½c for each poll tax paid, or for each person paying poll tax."

After a careful consideration of Section 3036 of the Code of 1923 and the preceding Section, 3035, I am of the opinion that the Section providing compensation contemplated merely compensation for each name placed on the list which you are required to furnish the Judge of Probate, without regard to the number of years for which the tax may have been paid.

This provision for compensation must be strictly construed and the county is not chargeable with fees or compensation of this nature except in the manner and to the extent **expressly** provided by statute. The statute **cannot** be extended **beyond** its letter.

I am of the opinion that you are to be compensated for making a **list** of persons who have paid poll tax. The rate at which you are to be compensated is fixed by statute at 2½ cents for **each** name you place upon the list. The provision is not broad enough to compensate you for receiving more than one tax and nothing on the list that the person has paid more than one year's tax.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
March 1, 1928.

Hon. Wm. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of February 23rd. You write as follows:

"I am writing you for information with reference to the appointment of managers in the coming primary for Tuscaloosa County.

"The law provides that the Probate Judge, Sheriff and Clerk shall appoint such managers if not disqualified and in the event that the Probate Judge is disqualified the Register in Chancery makes the appointment.

"As Probate Judge I am a candidate in that election. It so happens that the Register in Chancery is also a candidate in that primary for the same office. The Clerk is a candidate for another office.

"Please advise me under these circumstances who would be the proper one to appoint the Board for managers."

This is to advise you that, when a majority of the appointing board provided by section 439 of the Code, are disqualified, the Judge of Probate shall certify such fact to the Register of the Circuit Court. And by Section 441 of

the Code, if for any cause the Register of the Circuit Court is disqualified, the Judge of Probate shall certify the fact of the candidacy of the Judge of Probate, Sheriff, or Circuit Clerk to the Governor, **who shall forthwith appoint a qualified elector to act in the place of said officers.**

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
March 7, 1928.

Hon. George Malone,
Judge of Probate,
Athens, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of February 23rd. You write as follows:

> "Will you please give me your opinion as to whether or not the County is required to pay the premium on the bond of the County Depository."

This is to advise you that the bank designated as county depository is not a county officer within the contemplation of Section 2658 of the Code. The Supreme Court has held that it was merely a contractual agency to perform the functions of the treasurer.

> Comton v. Marengo County Bank, 203 Ala. 129.
> Hasty, County Judge, v. Marengo County Bank, 201 Ala. 280.

In view of the authorities above cited, the county cannot pay the premium on the bond of the county depository.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
March 9, 1928.

Hon. R. E. Adams,
Judge of Probate,
Brewton, Alabama.

Dear Sir:

I acknowledge receipt of your inquiry of February 29th. You write as follows:

> "1st. February 15, 1919, there was approved a Local Act of Escambia County, Alabama, governing the County with reference to the support of County paupers.
>
> "See Act No. 101 on page 32 of the Local Acts of Alabama of the year 1919.

"2nd. Code of 1923, section 6755, subdivision 13—provides that where there are no poor houses the County may allow each pauper the sum of six dollars per month and this is a part of the law governing paupers.

"Section 6755 of the Code of 1923.
"Section 2787-2806 of the Code of 1923.

"3rd. September 9, 1927, the General law on the question was passed and Section 45 repeals all laws in conflict with the provisions of this last named and last enacted law; "(a). Section 1 of this Act seems to give power to support the poor so long as they are inmates of a house or poor house; Sections 25 and 24 govern and control what paupers shall receive support and indicates that the poor must be in the poor house before they can be sustained by the County; Section 26 seems to prevent them from strolling from one part of the County to the other; and the whole Act seems to intend that all county paupers hereafter must be in the poor house. Especially is this indicated generally and in Section 43 of this Act.

"See General Acts of Alabama of the Regular Session of 1927, page 521-533, inclusive.

QUESTIONS PROPOUNDED.

"1st. Is the local Act above referred to exclusive and can the County still act under this local law or has it been repealed by the later and more general law above referred to.

"2nd. If the general later laws above referred to govern do they mean that the County must put everybody in the poor house before they can take care of them?

"3rd. The County is anxious to get rid of the pension system since so many in the County want to get six dollars per month and a large number are getting it, and recently the County has put up a **poor house building** and is now operating such a building.

"Please therefore kindly advise us.

"COURT OF COUNTY COMMISSIONERS OF ESCAMBIA COUNTY, ALABAMA, by R. E. Adams, Judge of Probate. Brewton, Alabama."

I advise you that an Act approved September 9, 1927, does not repeal the local Act pertaining to the method of maintaining paupers in Escambia County. Said Act approved September 9, 1927, does not repeal subsection 13 of section 6755, Code of 1923. There are no conflicts in the above cited statutes.

The Local Act, approved February 15, 1919, provides, among other things, "That upon the passage of this Act **the Court of County Commissioners** of Escambia County **shall have the power to decide** which of the county poor shall be maintained inside or outside of the County poor house." (italics supplied). Under this Act, there is no mandatory provision. The entire pauper population may be placed within or without an alms house, depending entirely upon the decision, in this regard, of the Court of County Commissioners of said County.

The Local Act expressly removes your county from the operation of subsection 13 of Section 6755, Code of 1923. However, this statute remains in full force and effect in all other counties in Alabama, where there are no poor houses, in the absence of a local Act similar to the one here considered.

The General Act approved Sept. 9, 1927, pages 521 to 533, inc., 1927 General Acts, providing for the support and maintenance of the poor and paupers of the several counties of Alabama, is not mandatory. If a governing body of a County desires to comply with the provisions of said Act, it may do so. This Act addresses itself to the discretion of the several county governing bodies within the State of Alabama.

In view of the foregoing provisions of law, you will note that the Commissioner's Court of Escambia County has broad authority in the matter of maintaining and providing for the paupers of said county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
March 9, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of February 24, 1928, in which you ask that I advise you when the one mill tax in Choctaw County becomes effective for collection. You enclosed ballot for said election and this ballot provides for an annual levy for a period of eleven years from September 30, 1928.

The tax year for school taxes runs from October 1st to October 1st as in the case of other taxes.

It is my opinion that the levy of the one mill tax in Choctaw County should begin on October 1, 1928, and that the collection of said tax should begin on October 1, 1929.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
March 9, 1928.

Hon. Reuben F. Hamner,
Sheriff, Dallas County,
Selma, Alabama.

Dear Sir:

I have your letter of March 5, 1928, in which you request that I advise you if the county should pay for long distance calls by the sheriff when such long distance calls pertain to official business of the sheriff's office.

The General Acts of 1927, page 693, contains an act which provides that courts of county commissioners shall furnish a telephone for the office of the sheriff.

This office rendered an opinion to Hon. G. H. Howard, Judge of Probate, on March 12, 1927, in which it was held that the section of the Code which authorizes a commissioners court to procure and provide telephones for county officers carries with it the authority on the part of the commissioners' court to authorize those county officers who have been furnished with telephones to use same for long distance calls where said calls are on official business connected with the duties of the particular office in which the telephone is installed.

In view of the above it is my opinion that the court of county commissioners is authorized to pay for long distance telephone calls by the sheriff if such calls pertain to official business of the sheriff's office.

Yours very truly,
CHARLIE C. McCALL,
Attorney General

Written by Mr. Koonce:LM
March 9, 1928.

Hon. R. E. Tidwell,
State Superintendent of Education,
Montgomery, Alabama.

Dear Sir:

I have your letter of February 29, 1928, with letter from the superintendent of education of Tuscaloosa County enclosed. You ask that I advise you whether or not a county superintendent of education can be employed on a sliding scale salary. That is to pay him a certain salary the first year with the understanding that his salary is to be increased each succeeding year; the amount of such increase being specific at the time of employment.

The Constitution of 1901, Section 281 provides that the salary, fees, or compensations of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed.

This office rendered an opinion to Hon. David Adams, Treasurer of School Funds of Wilcox County, on Oct. 6, 1927, holding that the salary of a county superintendent cannot be increased during his term of office.

It is my opinion that a county superintendent cannot be employed by a county board of education with the understanding that his salary is to be increased a specific amount each year that he is in office.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
March 10, 1928.

Hon. J. H. Johnson,
County Superintendent of Education,
Ozark, Alabama.

Dear Sir:

I acknowledge receipt of your communication of March 3. You state in your letter that a certain man in Dale County is a candidate for the office of County Superintendent of Education of said County, and that said candidate has failed to file with the Probate Judge a certificate signed by the State Superintendent of Education to the effect that said candidate holds a certificate of administration and supervision as required by the law fixing the qualifications for candidates for County Superintendents of Education.

Within the purview of the foregoing facts, you desire to know whether or not this particular candidate may legally have his name printed on the ballot, which ballot is to be used in the coming primary.

I advise you that this candidate is not entitled to have his name printed on the ballot for the reason that he has not complied with the statute in such cases made and provided.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
March 12, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of March 5th. You desire our opinion as to whether or not Mr. G. T. King, Tax Assessor of Mobile County can now make new books under the provisions of section 46 and section 47 of the Revenue Act, 1923 (Acts, 1923, pages 178 and 179), and receive pay for such new books.

In answer to your inquiry will say that presuming that original books have already been made as required by these two sections, new books cannot now be made and charged for.

When the book provided for by said section 46 has once been made, it becomes the duty of the Tax Assessor to make annual entries thereon to keep the book up to date. He is entitled to be allowed, by the Court of County Commissioners, a reasonable compensation for such work when performed. The Book required by this section is not exactly the same book as required by section 67 of the Revenue Act, 1919. It is my opinion that sections 69 and 70 of the Revenue Act, 1919, do not apply to the book required to be made by said section 46 of the Revenue Act, 1923.

On the other hand, it is my opinion, that since the book provided for by section 47 of the Revenue Act, 1923, is identical with the book provided for by section 68 of the Revenue Act 1919, then the provisions of sections 69 and

70 of the Revenue Act, 1919, apply to the book provided for by section 47 of the Revenue Act 1923. In other words, the book provided for by said section 47 of Act, 1923, is the same book provided for by section 68 of Act of 1919. Sections 67 and 68 of the Revenue Act 1919, were specifically repealed by section 88 of the Revenue Act, 1923. But, sections 69, 70 and 71 of the Revenue Act, 1919, were not specifically repealed by Revenue Act, 1923, and it is my opinion, that it was the legislative intent that these sections should remain the law, so far as applicable, unless where necessarily repealed by implication.

Sections 69, 70 and 71 of the Revenue Act 1919, in my opinion could not apply to section 46 of the Revenue Act, 1923, because said section 46 is different from section 67 or any other section of the Revenue Act, 1919.

Section 47 of the Revenue Act, 1923, is the same, substantially, and exactly, so far as the book to be made is concerned, as that provided for by said section 68, and does not provide for annual revision, which of course is necessary, and which, in my opinion, was intended to be cared for by section 69 of the Revenue Code 1919. In other words, the plat book provided for by section 47 of the Revenue Act 1923 is the same plat book provided for by section 68 of the Revenue Act, 1919, and the provisions of section 69 of the Revenue Act, 1919, not having been specifically repealed, is not, in my opinion repealed by implication so far as applies to the book required both by section 68 of the Revenue Act 1919 and by section 47 of the Revenue Act, 1923. Section 47 of the Revenue Act, 1923, recognizes this identity. It says: "The Tax Assessor shall make, or cause to be made, a complete plat book or books of all real estate in the County unless such book or books have already been provided," etc. This shows that the book, or books, required by the section, is the same as provided for by a prior act.

Summing up the matter, I am of the opinion that when the book provided for by section 46 of the Revenue Act, 1923, has once been made, it must be kept up to date by annual entries; that for making such original book, he must be paid as provided by said section 47, which claim is a preferred claim against the county. For making, thereafter, annual entries, he must be paid as provided for in said section 46. This is not a preferred claim, when such original book has once been made, since the Act of 1923 became effective, no pay for another original book is permissible. This book must be kept up by annual entries thereon.

For the making of the original book required by both section 68 of the Revenue Act 1919 and by section 47 of the Revenue Act of 1923, the Tax Assessor is to be paid as provided for by section 68 of the Revenue Act 1919 or, if not made before the Revenue Act 1923 went into effect, then as provided by section 47 of said Act, 1923. While section 69 of the Revenue Act, 1919, requires that this book, or these books, shall be revised before the first day of October each year, no specific provision is made for payment for such work. This revision is one of the duties of the office. As to this work, the Tax Assessor takes his office **cum onere.**

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
March 13, 1928.

Hon. Pat M. Dannelly,
Judge of Probate of Wilcox County,
Camden, Alabama.

Dear Sir:

I acknowledge receipt of your inquiry of March 9th, which reads as follows:

"Can a Probate Judge cancel a mortgage under power of attorney given in writing?"

In answer to your inquiry, I advise you that a Probate Judge may legally cancel a mortgage under power of attorney given in writing, provided that the power of attorney is in conformity with that part of section 9023 quoted herein. Where such a satisfaction is made, the Probate Judge would not be required to make additional attestation in conformity with Section 9023 of the Code of 1923. Said statute reads in part as follows:

"Or satisfaction may be made by an attorney in fact authorized by an instrument executed and acknowledged as is required of conveyances, and filed for record."

I find no statutory inhibition which would prevent the Probate Judge making a cancellation of a mortgage by virtue of a power of attorney.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
March 13, 1928.

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Alabama.

Dear Sir:

I acknowledge receipt of your letter of March 5th, which reads as follows:

"I write for an opinion relative to Section 4622 of the Criminal Code of Alabama. The point I want a decision on is, would section 4622 be mandatory or require a hard labor sentence in case a defendant is convicted for the first time under section 4621 but has previously been convicted under section 4623 or 4627. In other words, would the trial judge in a misdemeanor case under section 4621 when the defendant is found guilty under said section be required to add hard labor sentence when it is shown that the defendant had previously been convicted under section 4623 or section 4627 though the defendant had never been convicted under 4621 before?"

In reply to your inquiry, I advise you that a hard labor sentence may, or may not, be imposed on a defendant for the violation of section 4621, Code

1923, at the discretion of the Court or Judge trying the case, where the defendant has violated said section for the first time. It is only for the second violations of said Act, and not for violations at other times, of other Acts, that a hard labor sentence shall be imposed upon the defendant in addition to the fine. That is to say, under the facts of the case which you have in mind, it is entirely within your discretion to add a hard labor sentence. Section 4622 concerns second violations of the preceding section only.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
March 14, 1928.

Hon. Huey R. Lee,
Judge of Probate,
Clayton, Alabama,

Dear Sir:

This acknowledges reecipt of your letter of March 3. You write as follows:

> "On October 18, 1926, a deed was made to real estate in this county, reciting among other things, retention of a vendor's lien in favor of the grantor for $1,690.00. This deed was filed for record on December 6, 1926, in this office, and at that time, pursuant to a subsection (c) of Schedule 72 of the Revenue Laws (See Pamphlet edition, 1923, page 36) a mortgage record tax of $2.55 was collected from the grantee, who presented the deed for record, besides the deed record tax of fifty cents, the deed reciting a cash payment of $10,000.
>
> "It turned out that the same day this deed was executed, the grantor therein took a mortgage from the grantee on the same land to secure said $1690.00. On January 11, 1928, this mortgage, which makes no reference whatever to the deed, was filed in this office for record, and the usual mortgage record tax ($2.55) was then collected. Of course, at that time, more than a year after the filing of said deed, all recollection of the last named had passed out of mind of anyone in this office, in fact the two papers were handled by different clerks, and when the mortgage was filed the attention of no one here was called to the deed or its recitals. All record tax collected on both had been remitted to the State and county treasurers, respectively, before the matter was brought to attention of this office by the grantee in the deed.
>
> "I am requested by him to ascertain your advice whether the State will refund the $1.70, received by it from the record tax on the mortgage, and the procedure requisite for such refund."

In reply will say that under the facts stated by you, there is, in my opinion, no way provided by law by which the money paid as privilege tax for recording the mortgage can be paid back. Your attention was not called to the fact that the privilege tax has been paid on the lien reserved in the deed, securing the same debt for which mortgage was given, and there was

nothing in the mortgage to put you on notice of the fact; it could not, in my opinion, be said that the money was collected through error or mistake on your part. So far as could appear to you, the money was due.

The only law providing for repayment of a license erroneously paid is to be found in Sections 375 and 376 of the Revenue Act of 1919, at page 445 of Acts, 1919. In my opinion it could not be contended that the money was paid, in the case mentioned by you, through error or mistake on your part. If you had been apprised of the facts of the case, or, in any way chargeable with knowledge of the facts, and had then collected the tax, then, in my opinion, it would have been paid through error or mistake on the part of the Judge of Probate, and could have been paid back under the provision of said Sections 375 and 376 of the Revenue Act of 1919.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:K
March 15, 1928.

Hon. R. E. Tidwell,
State Superintendent of Education,
Capitol.

Dear Sir:

I have your letter of March 12, 1928, in which you refer to my opinion of the same date in which I held that the Department of Education is required to keep copies of the School Code of 1927 to be used in the mutual exchange of laws with other States and for sale to the general public. You request that I advise you as to the disposition of the money received from the sale of copies of the School Code of 1927.

The Act which provides for the adoption of the School Code of 1927 and which provides for the sale of copies of said Code by the Department of Education does not contain any provision for the distribution of the money received from said sale.

In view of the above it is my opinion that the money received from the sale of copies of the School Code of 1927, is to be deposited in the general funds of the State Treasury.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
March 15, 1928.

Hon. J. A. Carnley,
Judge of Probate,
Elba, Alabama.

Dear Sir:

I acknowledge receipt of your inquiry of March 10th, which reads as follows:

"The Local Law of Coffee County approved Feb. 7, 1923, Local Acts of 1923, page 13, provides for the election of a County Treasurer of Coffee County, and Section 4 of said Act (page 14) provides that the Treasurer shall give bond, etc. Please let me know if the premium on the official bond of the treasurer under this local law can be paid by the County of Coffee."

In answer to your inquiry I advise you that if the County Treasurer of Coffee County assumed the duties of his office prior to the adoption of the Code of 1923, the premium on his official bond cannot legally be paid by Coffee County. However, if said Treasurer assumed the duties of his office subsequent to the adoption of the Code of 1923, the premium on his official bond must be paid for by the county.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
March 19, 1928.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Ala.

Dear Sir:

This acknowledges receipt of your letter of March 16. You write as follows:

"Please advise whether a license for operating a **planing mill** can be collected under Schedule 125, Revenue Code, which provides for operating a saw mill?

"I am referred to the case of Nash vs. State, 110 So. Rep. 797 (21 Ala. App. 613) for authority to collect this license, but in reading the case I do not find that the decision touches this matter.

"No license has ever been collected from these concerns as they are in no sense **saw mills** and there is no provision of law known to me for the collection of a State and County license, for mere planing mills."

In reply will say that, in my opinion, a planing mill is not a saw mill, and its operator is not liable for license under schedule 122 of section 361 of the Revenue Act 1919. The opinion in the case referred to does not hold that a license for a planing mill must be paid. In the first place, the court was not deciding anything with regard to said schedule 122. The case before the Court was a prosecution for failure to take out license for wholesale dealer under Schedule 126 of Section 361, Revenue Act, 1919. In that case a license for a saw mill had been taken out. The plant had a saw mill as well as a planing mill; and, of course, properly took out license for the saw mill. In the **dicta** of the opinion, it was held that the saw mill license was properly taken out. This **dicta** was manifestly correct; because there **was** a saw mill;

and the license due for the saw mill was not nullified because of the fact that after having been sawed, the lumber was planed. But, there was no license due for the planing.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
March 20, 1928.

Hon. G. B. Baggett, Sheriff,
Winston County,
Double Springs, Alabama.

Dear Sir:

I acknowledge receipt of your letter of March 16th. You inquire as follows:

> "Under section 6716 of the Code, the Circuit Judge may when jury cases are being tried order not exceeding four bailiffs to serve.
>
> "Please advise if a regular salaried deputy sheriff may serve as one of these bailiffs, and draw $3.00 per diem therefor?
>
> "When four bailiffs are allowed, would that include the sheriff as one, or would the sheriff be considered as one in addition to four and come in under section 7287 of the Code?"

Section 10188, Code 1923, provides that there shall be a chief deputy sheriff in all counties of the State of Alabama which now have not more than two hundred thousand inhabitants according to the last Federal census or which may hereafter be taken, in which the sheriff is not on a salary basis under and by virtue of a constitutional amendment. The statute provides for the appointment of such Chief Deputy Sheriff by the sheriff, removable at the sheriff's pleasure, and for the payment by the county, for such services, of not less than $900 and not more than $1500 per annum.

An Act approved July 21, 1927, appearing at page 69 Local Acts of Alabama, 1927, allows the sheriff of Winston County an additional deputy sheriff, in addition to the chief deputy sheriff provided for in section 10188, Code 1923, above mentioned. Said Local Act fixes the salary of such additional deputy at $1200 per annum, and provides for the payment of the same out of the general funds of Winston County.

Section 6716, Code 1923, reads as follows:

> "The sheriff of the county must summon one person to serve as bailiff for the grand jury; one to serve as bailiff in every circuit court, or division thereof, in which cases are being tried without juries when directed by the judge; and not exceeding four to serve in every court, or division, in which cases are being tried by juries, when the Judge thereof certifies that such bailiff or bailiffs are actually necessary."

It is my opinion, and I so advise, that the concluding part of the statute last above quoted could not be construed as contemplating the appointment of deputy sheriffs who are paid from public funds. Under the law as above

set out, you are entitled to a chief deputy sheriff and an additional deputy sheriff. These men are paid for their services from county funds. If they are drawing the limit allowed by law for their services, clearly, it would be illegal to increase their compensation under the guise of their performance of duties as bailiffs. Even though such deputy may not be drawing the maximum salary, it would be opposed to public policy to have him compensated twice, by the county, for performing the same service, once as deputy sheriff and again as a bailiff.

Section 6716 contemplates the appointment of four men as bailiffs other than the deputy sheriffs provided by law. Such bailiffs can be legally appointed **when the judge of the court certifies that such bailiffs are actually necessary.** Without this certification the appointment would not be legal.

In addition to the two deputies allowed you by law, and paid by the county, you may employ and compensate as many other deputies as you desire. But you are to pay them—not the County. The deputies paid by you may legally serve as bailiffs and draw compensation therefor, when the court certified that their appointment as bailiffs is actually necessary. That is to say, a regular salaried deputy sheriff who is paid from public funds cannot legally draw $3.00 per day for acting as bailiff.

In answer to the last paragraph of your letter, I advise you that a sheriff and a bailiff are two separate and distinct officers. The sheriff, therefore, should not be considered as one of the four bailiffs mentioned in Section 6716. The sheriff may not legally charge any fee unless he can point to the specific statute authorizing such a fee. A sheriff is not allowed a fee for acting in the capacity of a bailiff.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:B
March 22, 1928.

Hon. W. E. Merrell, President,
Board of Revenue of Shelby County,
Columbiana, Alabama.

Dear Sir:

I have your letter of March 10, 1928, in which you state that the Board of Revenue has recently issued some warrants on your gasoline accounts. You also state that your Board could handle these warrants if permitted to do so and you ask that I advise you if such can be done.

It is my opinion that the Code of 1923, section 5016, contains the answer to your question and that a member of the Board cannot handle the warrants to which you refer.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to
Hon. Oliver Miles,
Clerk, Board of Revenue,
Columbiana, Ala.

Written by Judge Evans:B
March 22, 1928.

Hon. Woolsey Finnell,
State Highway Director,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of March 20th. You write as follows:

"The State Highway Commissioner has heretofore secured the right of way and constructed a gravel road in Houston County known as Federal Aid Project 12 which leads into the City of Dothan over at North Oates Street. This highway was constructed of gravel until such time as the State would be in a position to put a more permanent type of surfacing on same and this Department is now maintaining this road.

"The present Commission has recently let a contract for paving this road No. 7 from the Dale County line to approximately 2600 feet of the city pavement of Dothan, the terminus of this paving being the city limits of Dothan.

"This Commission is now desirous of connecting up this stretch of 2600 feet of highway which we are now maintaining as a gravel road and we now propose to pave this section of 2600 feet with a like material as our highway leading up to the city limits of Dothan, provided we have authority to do so under the law.

"I will thank you for your opinion as to whether we have the authority to now pave this section of Road No. 7 remaining unpaved, the right of way having been secured by this Department when the road was first surveyed, and this part of the road running through open fields and undeveloped property."

In reply will say that, under the facts stated by you, it is my opinion that, it will be entirely legal and proper for the State Highway Commission to pave the roadway or street mentioned by you, provided it constitutes a necessary connecting link of the State Highways, and the City of Dothan agrees that the State Highway Commission may do so. In my opinion, the legislative intent, in Section 6 of the Highway Code, in giving authority to pave the roadway only of streets connecting State Highways in cities or towns of five thousand or less inhabitants, was to prevent such municipalities from placing an obstacle in the way of connecting such highways. Such municipalities frequently have no gas or sewerage or water works and hence no necessity for preventing the laying of pavement, whereas larger cities usually have to have control of the streets for such purposes. It would be difficult to lay the necessary pipes for water, gas or sewerage in the street after pavement. Hence, the Legislature would not take away such control of streets in the larger cities. The necessity of making such connections, however, is so great that, in my opinion, there was no legislative intent to prevent the State Highway Department from making such connection where the city to be effected desires that it shall be done and the State Highway Department deems such connection necessary for a proper State Highway System.

In other words, the failure to give authority to the State Highway Department, regardless of the wishes of the municipality, in cities of more than five thousand inhabitants, was for the benefit of the cities in laying in the street the necessary pipes. This right, in my opinion, the city may waive, especially where the street is so thinly populated that to pave by the city is impracticable.

In this case it appears also that the State acquired the right of way for this connecting link before the corporate limits of the City of Dothan were so extended as to include this part of the Highway.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:K
March 22, 1928.

Hon. W. J. Merrill,
Tax Collector, Covington County,
Andalusia, Alabama.

Dear Sir:

I have your letter of March 16, 1928, in which you state that the Court of County Commissioners of Covington County exempted the Micolas Cotton Mill of Opp, Alabama, from payment of district school tax for 1924, 1925, and 1926. You also state that it seems to have been an error for such exemption to be made and you ask that I advise you if it will be your duty as Tax Collector to collect interest on these taxes from the date that they were due.

It is my opinion that you should collect interest as provided by Code of 1923, section 3056, on the taxes referred to above from the date that they became delinquent.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
March 22, 1928.

State Highway Department,
Capitol.

Gentlemen:

This acknowledges receipt of your letter of March 15, 1928. You desire that we construe for you subsections (b), (c), (d) and (e) of Section 28 of the Highway Code of Alabama.

In reply will say that subdivision (b) provides for the furnishing, by the Highway Department, to any person, firm or corporation, who has supplied a contractor with labor, materials, food-stuffs or supplies, in the execution of the work provided for in the contract, a copy of the bond made to the Highway Department, to secure the performance of the work provided for under such contract, and to secure the payment to any person, firm or corporation

for labor, materials, feed-stuffs or supplies supplied in the execution of the work provided for in such contract.

The manner in which such person, firm or corporation may obtain such copy is as follows:

After the completion of the contract, which includes satisfactory construction of the project and then maintenance for thirty days after construction, and not afterwards, and not before, and within sixty days after such completion, the person, firm or corporation supplying such labor, materials, feed-stuffs or supplies, shall make application to the Highway Department for such copy of the bond, and must furnish the Highway Department, with an affidavit in which there is stated the fact that labor, materials, feed-stuffs or supplies in the execution of the work provided for in the contract, has been supplied by him or them and that payment for the same has not been made. When any person, firm or corporation, within the said sixty days, furnishes such affidavit, it becomes the duty of the Highway Department to furnish a copy of such bond to such person, firm or corporation.

Such person, firm or corporation furnishing such labor, materials, feed-stuffs or supplies, is authorized to bring suit on said bond in his or its name for the amount due him or it for such labor, materials, feed-stuffs or supplies, and to prosecute such suit to judgment and execution. It is for the bringing of such suit that the copy of the bond is furnished.

Subdivision (e) provides that suit on such bond must be commenced within sixty days after the complete performance of the contract and final settlement thereof. This means that after the Highway Department has made final payment to the contractor, unless the contractor then settles for all labor, maerials, feedstuffs and supplies, a party furnishing any of same, may within sixty days after such final payment by the Highway Department, bring suit on the bond for amount due him. Suit could not be brought on the bond by a person supplying labor, materials, feed-stuffs or supplies, at any time except within the sixty days period immediately succeeding final payment by the Highway Department. This final payment should be made as soon as practicable, under the law, so as not to delay persons supplying labor, materials, feed-stuffs or supplies, in bringing suit on the bond, if they see fit to do so. This period of sixty days would, in my opinion, begin on the day after final payment has been made by the Highway Department. The suit by such person, firm or corporation may be brought in the county where the work was done or in any county where the contractor does business by agent.

Said subsection (e) further provides that where suit is instituted by such a creditor or creditors, on the bond of the contractor, only one action shall be brought, and any creditor, or creditors, other than the one first bringing the suit, may file his claim in such action and be made a party plaintiff, also, to the suit. When suit is brought by any such creditor, or creditors, personal notice must be given to all other known creditors of their right to intervene, as the court may order, also notice by publication for the benefit of unknown creditors for labor, materials, feed-stuffs or supplies, in order that all such creditors, as desire to do so, may file their claims in said suit and intervene as the court may direct. The Court will, of course, see that such notices have been given and due time allowed for such intervention before proceeding to judgment.

Subdivision (c) provides that the contractor shall, immediately after the completion of the contract, (which, as already stated, includes satisfactory construction of project and maintenance for thirty days thereafter) give notice of said completion by advertisement in some newspaper of general circulation published in the city or county wherein the work has been done for a period of four successive weeks.

Subdivision (c) also provides that in no instance shall final settlement be made upon the contract until the expiration of thirty days after the completion of the contract; which as already stated includes satisfactory construction of project and maintenance for thirty days thereafter. At any time after the expiration of such thirty day period, which must begin after the expiration of the thirty day period of maintenance, final payment may be made by the Highway Department to the contractor; provided the notice required has been given by the contractor. After the expiration of the thirty day period after the completion of the contract, if the construction and maintenance have proved to be satisfactory, and notice of completion has been given by the contractor, final payment on the contract should be made. It is for the purpose of securing satisfactory completion of the construction of the project and maintenance thereof for thirty days that the 15% of the contract price is withheld. This withholding of 15% of the contract price has, in my opinion, nothing to do with securing creditors of the contractor. Persons crediting the contractor must look to the contractor or to his bond or both.

Subsection (d) provides that upon demand of the contractor for final settlement, the contractor shall file with the Highway Department a sworn statement by the publisher that the notice prescribed by sub-section (c) has been made. The several dates of publication should be given, and a copy of the publication should be attached to such affidavit. This notice is required so that all claimants may look after their interests within the time allowed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
March 22, 1928.

Hon. M. V. Henry,
County Treasurer of Jefferson County,
Birmingham, Alabama.

Dear Sir:

I acknowledge receipt of your letter of March 15th in which you make the following inquiry:

> "My inquiry of March 12, 1928, to which you replied under date of March 14, 1928, asking for a specific question, was meant to apply to the claim of the Birmingham Post for advertising 'Primary Election Regulations and Resolutions of State Democratic Executive Committee, adopted December 16, 1927.' The warrant of the Board of Revenue authorizing payment for this claim reads: 'For publication 'Notice Primary Regulations' for Election."

"The specific question I wish to propound is: Has the State Democratic Executive Committee the right to charge to a county the expense of publishing in a newspaper of that county notice of said committee's 'Regulations and Resolutions governing a state wide Democratic Primary Election?"

Section 611, Code of 1923, provides as follows:

"Notice of Prmiary Election; How Given—When it shall be desired by the state executive committee or governing authority of any political party to enter the primary election ordered to be held under the provisions of this chapter, said committee or governing authority for the state or political subdivision of the state where any such offices are to be voted upon shall give public notice thereof by posting notices of such election at the courthouse door and by advertising in some newspaper published in such subdivision, if there be such a newspaper, at least once a week for three consecutive weeks prior to such primary election."

Section 609, Code of 1923, provides inter alia as follows:

"Expenses of such primary elections shall be paid in the same manner and to the same extent as is or may be provided by law for the payment of the expenses of a general election held under the laws of Alabama."

Under the above authority it is my opinion, and I so advise that the claim in question, should be paid out of the County Treasury of Jefferson County. That is to say, the warrant drawn by the Board of Revenue to pay for publication of a notice of a primary election is a legal claim against the county. The fact that said notice also contains certain regulations and resolutions pertaining to the holding of said primary would not invalidate the claim. Such information is a necessary and essential part of the notice.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
March 23, 1928.

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of March 23rd. You write as follows:

"Your attention is directed to the following: Hollis Griffith was convicted in Walker County for the crime of Bastardy. He was sentenced for a term of 1 year and 224 days to pay the cost $168.63. Date of sentence 4-25-27.

"Will you please advise whether or not the Judge can assess cost and fine against a defendant for Bastardy?"

This is to advise you that the power to sentence to hard labor for a period of twelve months under section 3428 of the Code of 1923, necessarily carries the power to sentence for the costs of a bastardy proceeding.

Paulk v. State, 52 Ala. 427.
Kruhethau v. State, 92 Ala. 91.
Grace v. State, 16 Ala. App. 366.

It therefore follows that the judge of a court of competent jurisdiction can upon the failure of the defendant to give bond when the issue is found against the putative father of a bastard child, sentence the defendant to perform hard labor for one year and in addition thereto, sentence him to perform hard labor for the payment of the costs of the proceedings.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:B
March 27, 1928.

State Tax Commission,
Capitol.

Dear Sirs:

This acknowledges receipt of your letter of February 27th. You write as follows:

"Since the first gasoline tax was enacted in February, 1923, and continuing under that act, as well as under the act of January the 25th, 1927, to date, the Wofford Oil Company has paid the gasoline tax under so called protest. The payment has always been made as required by law voluntarily and it has never been at any time necessary to institute any proceedings or to take any actions to enforce the payment of this tax by the Wofford Oil Company. However, each month when check is remitted for the amount of the tax, there is always attached a letter and an affidavit either exactly or substantially in the following form:

"COPY OF A LETTER FROM WOFFORD OIL COMPANY TO W. B. ALLGOOD, TREASURER.

Mr. W. B. Allgood,
State Treasurer,
Montgomery, Alabama.
Dear Sir:

"We are enclosing our check No. 24282 amounting to $———— which we are paying under protest and hereby give notice to the State of Alabama, to the Tax Commission and to the Offices of the State Tax Commission that we contend that the statute under which this so called excise tax is being collected is illegal, void, unconstitutional and discrimi-

natory and demand is hereby made for the refund of the sum of money so paid and you are hereby further notified not to make distribution of funds so paid under protest in your hands as set out in the Act of Session 1926-1927 Legislature of Alabama on January 4th, 1927.

Yours very truly,
WOFFORD OIL COMPANY,
(Signed) W. D. LINDSAY,
Secretary and Treasurer.

dwl-jp

"COPY OF AFFIDAVIT ACCOMPANYING ABOVE LETTER.
PAYMENT UNDER PROTEST.

"The undersigned hereby pays under protest the sum of $———— and hereby gives notice to the State of Alabama, to the State Tax Commission and to the Offices of the State Tax Commission and to the several counties of the State of Alabama, that it contends that the statute under which said so called excise or franchise tax is being collected is illegal, unconstitutional, void and discriminatory, and demand is hereby made for the refund of the sum of money so paid and you are hereby further notified not to make distribution of the funds so paid into your hands to the several counties of the State as set out in the Acts of 1923.

WOFFORD OIL COMPANY,
By (Signed) W. D. LINDSAY.

Dated this the 21 day of Mar. 1927."

"It is our understanding that this attempt to pay under protest has never been made with the slightest idea of contesting the law. We understand that this method is adopted for the purpose of insuring the right to a refund should the law ever be declared invalid and that it has no further meaning. Nevertheless, some of the County Treasurers take the position that the county gasoline tax, so far as it is paid under protest by this company, cannot be used until the validity of the law has been determined. In effect, this payment under protest as here explained prevents the use of a part of the gasoline tax by the counties in road construction as designed by the law, and it becomes necessary in order that the fund may be applied as intended by the Legislature that the effect of this method of payment in some way be determined.

"We would like for you to advise us whether payment as here explained is really a payment under protest in the legal sense and if County Treasurers would be chargeable under their bonds for allowing the funds so paid to be used by the county authorities on county roads as contemplated by the gasoline act of February, 1923."

In reply to your inquiry will say that, under the facts stated by you, the payment of the tax by the Wofford Oil Company is, in my opinion, entirely voluntary and is, in no legal sense, paid under protest.

So far as the County Treasurers are concerned, the money paid to them in the distribution of the gasoline taxes, is paid by the State Treasurer, and in no sense, is paid under protest and there is no possible responsibility resting upon the County Treasurer with reference to it except to deal with it as the law directs.

In my opinion, such a pretext on the part of County Treasurers, offered for withholding such money from the use directed by the law, is without shadow of justification in law or morals.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
March 28, 1928.

Hon. S. M. Dunwoody,
Commissioner of Agriculture,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of this date. You write as follows:

"Section 99, Article 12, of the Agricultural Code of 1927, relating to corn meal, reads as follows:

"'Any miller, or person shall be guilty of a misdemeanor who manufactures, grinds, or repacks corn meal, or who conducts a merchant mill, to pack or cause to be packed, or be offered for sale to merchants or the general public, or to carry in stock with intent to sell, corn meal, bolted or unbolted, packed in any other than 3 pound, 6 pound, 12 pound, 24 pound, 48 pound, and 96 pound sacks, or 96 pound half barrels, and 196 pound barrels, wood; or shall fail to have plainly printed or stenciled upon them "bolted meal" or unbolted meal," steam or water ground, as the case may be, as indicating the kind of power used in the mill producing the same, or who shall fail to show the net weight in pounds.'

"The last three lines of Section 100 provides that any retail merchant, may, on order, weigh and sell from bulk meal, any number of pounds desired by any individual customer.

"This Department has in the past, on the opinion of a former Attorney General, prohibited the manufacture and sale of corn meal in sacks and paper cartons weighing less than three pounds, when the meal was not packed in the presence of the purchaser. A dealer in this State has recently asked permission to sell corn meal in cartons weighing 1½ pounds. He stated that the law applied only to meal when packed in sacks and not when packed in any other kind of container.

"Please advise me whether this Department is within its rights in prohibiting the sale of any package of corn meal weighing less than three pounds, irrespective of the type of container in which it is packed."

In reply will say that it is difficult to advise in language which is plainer than that of the statute. But will say that the statute clearly prohibits any one from carrying in stock, for sale to the public, corn meal in packages of weights other than stated in the statute; that is, 3 pounds, 6 pounds, 12 pounds, 24 pounds, 48 pounds, 96 pounds and 196 pounds.

It is permitted, however, that a merchant may keep on hand meal in bulk, from which he may sell any number of pounds asked for by a customer; but it should be separated from the bulk and weighed after the amount desired is stated by the customer.

This is a reasonable regulation of the business and was enacted by the Legislature to prevent deceit in the amount of meal actually delivered.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:B
March 28, 1928.

Hon. John Brandon,
Secretary of State,
Capitol.

Dear Sir:

This acknowledges receipt of your letter of December 17th. You write as follows:

> "As the officer charged with the administration of the provision of Section 43 of the Revenue Act of 1927, as well as the collection of the fees provided therein, several questions have arisen which, in my judgment, require your opinion.
>
> "Concerning the liability of domestic corporations for the payment of the permit fee provided in the section of the Revenue Act above referred to, please advise me in the following cases:
>
> "1. Corporations without assets and transacting no business. (a) If held to be liable, how can collection be made.
>
> "2. Corporations inactive except for liquidation.
>
> "3. Corporations of a religious, social, benevolent or educational character.
>
> "4. Hospitals (corporations) whose by-laws provide that any net profits over and above actual expenses shall be devoted to charity.
>
> "5. The basis of the measure for the fee to be paid by Building & Loan Associations. (See Sub-section 11 of Section 5 of the Act "To amend Section 7097, et. seq. Code of 1923, approved August 26, 1927, p. 431, Acts of 1927.)
>
> "6. Holding companies."

In answer to question 1, will say that I do not know.

In answer to question 2, will say that the corporation is liable for the permit fee.

In answer to questions 3 and 4, will say that, in my opinion, the law applies in all cases where the corporation has paid capital stock, but not in cases where there is no paid capital stock.

In answer to question 5, will say that, in my opinion, subsection 11 of Section 5 of the Act "To amend Section 7097, et. seq. Code of 1923," approved August 26, 1927, page 431, Acts 1927, has no application to the permit fee, as this permit fee is not a tax on capital stock.

In answer to question 6, will say that where holding corporations have paid capital stock they are liable, as I find no exception in favor of such corporations anywhere in the law, and I know of no reason why they should not be held exempt.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

JWB-b
March 29, 1928.

Mr. Sam T. Huey, Clerk,
Circuit Court of Jefferson County,
Bessemer Division,
Bessemer, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of March 28th. You write as follows:

> "Under House Bill No. 268 of the Acts of the Legislature of 1927, as shown on page 264 of the General Acts of the Legislature, can we issue a half year license to a party beginning the business of lending money in sums of $100.00 on or after April the 1st of any license year. Or would we, under this statute have to collect the $100.00 provided for as an annual license regardless of when such party began business.
>
> "Please give me a prompt reply to this matter, as I have a party who wishes to begin his business to pay such licenses as soon after April the 1st as possible."

Replying to your request for a construction of H. B. 268, Acts 1927, page 264, I am of the opinion that you will have to collect the sum of $100.00 as an annual license fee under the act supra.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
March 29, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This acknowledges reecipt of your letter of March 20. You enclose letter of Mr. P. B. Jarman requesting an opinion upon the following:

> "Is a decree of the Probate Court condemning a right of way and conveying title to that right of way, which is filed for record in the Probate Office and duly recorded in a deed record, subject to the deed tax of fifty cents on each five hundred dollars or fractional part thereof?"

Mr. Jarman failed to state what the right-of-way is for or in whose favor the decree was rendered.

Presuming that he means right-of-way for a public highway and in favor of the county, will say that, if such is the case, no tax is required of the county for recording such a decree, nor would any tax be required of a county for recording a deed to a right-of-way for public road.

If I am mistaken as to his meaning, then I will have to have further information.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:B
March 29, 1928.

Hon. W. N. Daniel,
City Clerk,
Phoenix City, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of March 26th. You write as follows:

> "In a discussion with the Mayor this morning regarding convictions for second or third offense of violation of prohibition law, the Mayor claimed that he was informed by one of the local attorneys that in docketing cases for violation of prohibition laws, I could not show on my docket that it was the second or third offense against the defendant, and that unless the Mayor, acting as Recorder, personally knew that such offense was the second or third offense, he did not have to give the defendant any additional time.
>
> "I would appreciate an opinion from you on this question as it seems to be quite an issue in Phoenix City and Girard as to whether or not the Mayor must give the defendants time for second or third offenses, and whether or not in performing my duties as clerk of the court, I have the right to show whether such cases are second or third offenses."

In answering your inquiry I first desire to call to your attention Section 89 of the Constitution of 1901, which reads as follows:

> "The legislature **shall not have power to authorize any municipal corporation** to pass any laws inconsistent with the general laws of this state."

I am not advised as to the ordinances of your city regarding the punishment to be imposed by the recorder for the violation of the prohibition ordinances, but in this connection, I quote for your information sections 1945 and 1946 of the Code of 1923, which reads as follows:

> "Recorder; Concurrent Jurisdiction with County Court; Judgment of one, Bar to Prosecution.—The recorder shall have original and concurrent jurisdiction with the county court or court of like jurisdiction, of all

misdemeanors committed within the city or town, or within the police jurisdiction thereof, but no fine or judgment of acquittal or conviction rendered by said recorder shall be a bar to a prosecution by the state in any case where the facts or offense charged constitute a felony under the laws of the State of Alabama. When a person has been tried and convicted of any offense which is a misdemeanor under the state laws, by a municipal officer empowered by law to try such offense, he shall be punished as provided by law."

"Fines and Punishments Same as in State Courts.—When the recorder, under the preceding section, convicts a party of a misdemeanor against the state, the limits of the punishment shall be those imposed by the state law for the offense; and whenever the state has prescribed for such offense punishments in the alternative or conjunctively, such as fine and imprisonment or hard labor for the county or compulsory imprisonment to hard labor for the second or a subsequent offense, the punishment to be inflicted by the municipal officer enforcing the state law, shall be prescribed by the state law, and within the limits prescribed for the particular offense; and in no case less than the minimum fixed by the state law."

In this connection, I also cite the case of Ex Parte Williams, 91 South. 914.

I, therefore, advise you that, if your ordinances provide, or make it mandatory upon the recorder to impose hard labor upon a second conviction for the violation thereof, then, the recorder would have no discretion in imposing the punishment, and, it is the duty of the recorder if, the evidence convinces him that the defendant is guilty, then, to ascertain whether or not the defendant, since the adoption of the ordinance, has been convicted for the violation of the prohibition ordinances of your city. The fact that it is a second or third conviction should be proved by evidence at the trial and the finding of the court that it is a second or third or other conviction should be shown in the judgment entry. The court could not act upon its own knowledge of such fact.

I further advise you that the recorder may try cases under the State law, for violations of any misdemeanor committed in the city or within the police jurisdiction of such city, and his jurisdiction in that event is concurrent with the county court, and if the recorder should try for the violation of the State laws he must, on a second conviction for the violation of the prohibition laws, impose hard labor.

Ex Parte Williams, supra.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:B
April 5, 1928.

Hon. Sam T. Huey, Clerk,
Probate Court of Jefferson County,
Bessemer Division,
Bessemer, Alabama.

Dear Sir:

I have your letter of April 4th in which you ask that I advise you if under Schedule 60 of the Revenue Act of 1919 you can issue a half year's license to an ice manufacturer, who begins the manufacture of ice after April 1st.

Section 377 of the Revenue Act of 1919, contains ample provision for the issuance of a half year's license. Said provision reads as follows:

> "If any business licensed by this Act shall commence after the first day of April of any year, the amount of the license shall be one-half of the year's license. In all other cases the license shall be taken out for the full term of one year unless a shorter term is fixed by the provisions of this Act. In all cases where the amount of license is rated according to the population of the town, city, or county, the population of such town, city or county, as fixed by the last preceding United States Census shall govern."

In view of the above it is my opinion, that you can issue a license for a half year to the manufacturer referred to in your letter.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
April 8, 1928.

State Tax Commission,
Capitol.

Attention: Mr. Mooring

Dear Sirs:

This acknowledges receipt of your letter of April 7th. You enclose letter from B. S. Landrum, License Inspector. He wishes to know if license under Section 18 of the Revenue Act, 1923, is required for a tractor used exclusively in constructing public highway before such highway is turned over by the State Highway Department for public use.

After careful consideration of the matter, it is my opinion that it was not the legislative intent to require a license for such a tractor. If any part of the public highway already constructed, and turned over for public use is at any time used, except as provided by said Section 18, then in my opinion a license would be required. The provision referred to in said Section 18 is as follows: "Provided, however, that this license shall not be collected for a tractor when run on a highway to be transferred from one point to another

for use on a farm, or when used on the Highway for transferring what is commonly known as a portable saw mill or a well boring outfit."

The foregoing are the only exceptions for running a tractor over a highway. These exceptions, being specified in the statute, would indicate that no other exception was intended by the legislature.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
April 10, 1928.

Hon. R. H. Williams,
Judge of Probate,
Guntersville, Alabama.

Dear Sir:

I am in receipt of your letter of April 7, in which you desire an opinion on the following matter:

> One Mr. R. E. Wardlaw is a subcontractor. Howell Brothers Construction Company have contracted to chert the State Highway between Guntersville and Arab and are under contract with the State Highway Department of this State. They have subcontracted this work to Mr. Wardlaw on a percentage basis. Under the law of this State, is Mr. Wardlaw liable or under a duty to take out and pay for a license as a contractor?
>
> "Mr. Wardlaw keeps a filling station for the purpose of supplying gas to his own trucks. He does not sell to the public, but does permit other owners of trucks working for him to get gas from his station, but he does not sell to anyone else except the owners of trucks who are working for him and takes pay out of the checks due to them for their hauling chert on the Highway above mentioned. Is he under duty to take out and pay for a license for carrying on the business of a filling station, under our law?"

In reply to your first inquiry will say that Section 34, page 406, of the Revenue Laws, General Acts of 1919, reads in part as follows:

> "CONSTRUCTION COMPANIES OR CONTRACTORS:—Any person, firm or corporation accepting orders or contracts for doing work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, electric wiring, or other steel, or any other building material, or shall accept contracts to do any paving or curbing on sidewalks or streets, public or private property, using asphalt, brick, stone, cement, wood or other composition, or who shall accept an order for or contract to excavate earth, rock or other material for foundation or any other purpose, or who shall accept an order to construct any sewer of stone, brick, terra cotta, or other material, or shall

accept a contract to construct highways, bridges, dams or railroads, shall be deemed a contractor."

I do not think it matters whether the party doing the work is the original contractor or is a subcontractor. I find no provision of law exempting subcontractors, and I therefore hold that a subcontractor will be required to pay the license provided by law.

In answer to your second inquiry will say that under Section 20, Revenue Laws of Alabama, 1927, page 23, reads in part as follows:

"Each person, firm or corporation operating for profit any gasoline station or pump will be required to pay the license as provided by law."

It would make no difference whether a person sold gasoline to his employes only, if he charges them a profit on it, I hold that under the above section, he would have to pay the license provided by law for operating.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
April 10, 1928.

Hon. Isaac M. Richeson,
Chairman, Board of Registrars,
Russellville, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of March 5. You want to know if the Board of Registrars have to pay for the publication of the names of the qualified voters in Franklin County.

This is to advise you that it is the duty of the Judge of Probate to prepare the list and publish the names of the qualified voters of your county.

See Section 387, Acts, 1927, page 275.

I further advise you that the Board of Registrars have nothing to do with the publication of such lists nor the payment therefor.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:LM
April 17, 1928.

Hon. J. E. Acker,
County Solicitor,
Ozark, Alabama.

Dear Sir:

I have your letter of April 6, 1928, in which you ask that I advise you if a person can be prosecuted for transporting prohibited liquors in quantities of five gallons or more for a felony, and at the same time where the same prohibited liquors are involved as evidence, be prosecuted for possessing prohibited liquors, for a misdemeanor.

I understand from your letter that you desire to know whether or not a person who transports five or more gallons of prohibited liquors can be prosecuted for both the possession and the transportation.

The Code of 1923, Section 4621, prescribes the punishment for possession of prohibited liquors.

The General Acts of 1927, page 704, contains the act which prescribes the punishment for transportation of prohibited liquors in quantities of five gallons or more.

The Supreme Court of Alabama held in the case of Burt v. State, 48 So. 851, that a person cannot be convicted in this State for two offenses, when both offenses are included in a single act.

This office rendered an opinion to Hon. J. H. Hollis, County Solicitor, on July 14, 1927, in which it was held that a single crime cannot be subdivided into two or more indictable offenses.

In view of the above, it is my opinion that a person cannot be prosecuted under the above statutes for both possession and transportation, when such person transports five gallons or more of prohibited liquors.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
April 17, 1928.

Hon. J. Massey Edgar,
County Attorney,
Chatom, Alabama.

Dear Sir:

Your letter of March 29th received, in which you make requisition for an opinion on the following subject:

> "You will please give me an opinion upon the following statement of facts as to whether the owner of an automobile can be prosecuted criminally for 'operating an automobile upon the public highways of Washington County without a license tag properly displayed,' when the car is being driven by another and hired by the owner to drive same.

"Likewise can the owner of an automobile be prosecuted criminally 'for operating an automobile upon the public highways of Washington County without first obtaining license therefor,' when the car is being operated or driven by another who is employed by the owner to operate such automobile."

I am of the opinion, and so hold that the owner of any motor vehicle would be liable for the license to operate same and not the driver.

The owner is in fact the operator and the driver is merely an agent of the owner and operating it for him and in his stead.

I am therefore of the opinion that the owner could be prosecuted for failing to obtain a license for its operation as it is his duty to see that his motor vehicle is provided with a tag in compliance with the law before it is driven upon the highways of the State.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
April 17, 1928.

Hon. Sam J. Sanders,
County Treasurer, Fayette County,
Fayette, Alabama.

Dear Sir:

I acknowledge receipt of your letter of April 10th, which reads as follows:

"I have been presented with a warrant issued by the Commissioners' Court of this, Fayette County, made payable to the Sheriff, for $14.00 for handcuffs bought or ordered by the Sheriff for the use of the Sheriff and Sheriff's office. Would this be considered as supplies for a county office, and is it a legal and preferred claim against the county. I am anxious to pay this claim if it is legal, etc."

I advise you that I find no authority of law which authorizes the county, through the commissioners' court, to purchase handcuffs for the use of the sheriff's office. The Court of County Commissioners is purely a creature of the statute, and therefore has only such authority as is expressly stated in the statute. Section 6755 of the Code of 1923, and an act amending Subdivision 1 of said section, which was approved February 18, 1927, and found at page 57 of the General Acts of Alabama, 1927, do not authorize the expenditure here inquired of.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:LM
April 17, 1928.

Hon. A. L. Hasty,
Judge of Probate,
Linden, Alabama.

Dear Sir:

I am in receipt of your letter of April 5 in which you desire an opinion on the following matter:

"Whose duty is it to convey the indigent lunatics to the asylum? Is it the duty of the Probate Judge or the Sheriff?

"Is the Probate Judge compelled to give all of his papers to the Sheriff to serve or can he have them served by bonded Constables just as well?"

In answer to your first inquiry I advise that under Section 1445 of the Code of 1923 the Judge of Probate has the right and power to deputize any one or more persons, relatives or officers to convey patients to the asylum.

The section reads as follows:

"CONVEYING PATIENTS TO HOSPITAL:—The Judge of Probate shall depute one or more persons, relatives, friends, or officers, as he may see fit, to convey the patient to the hospital, and all necessary expenses incurred in conveying an indigent patient to the hospital shall be paid out of the county treasury on order from the county commissioners."

As to your second inquiry will say that this would be governed by statute in each particular case, and we are unable to give any set rule that would govern all contingencies that might arise.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:B
April 17, 1928.

Hon. R. E. Tidwell,
State Superintendent of Education,
Montgomery, Alabama.

Dear Sir:

I have your letter of April 10th with letter of Mr. E. B. Erwin, Superintendent of Education of Jefferson County enclosed. Mr. Erwin states in his letter that he wishes to be advised whether or not a city of not less than six thousand population in Jefferson County automatically assumes control of schools, or may such city elect to remain under the management of the county board of education as to its schools, and if the latter is true, what steps would be necessary for the city to take in the matter.

The School Code of 1927, Section 189, defines a city in Jefferson County as contemplated by said act.

The School Code of 1927, Section 191, provides that the general administration and control of the public schools and educational system of such cities shall be vested in a city board of education, to be composed of five members who shall be residents of said city, and who shall not be members of the city council or commission.

It is my opinion that a city of not less than six thousand population in Jefferson County is to be controlled by the City Board of Education. It is also my opinion that the provisions of Section 188 of the School Code of 1927, and the sections immediately following it, should be strictly followed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:LM
April 19, 1928.

Hon. Joe Patton,
Tax Collector,
Livingston, Alabama

Dear Sir:

I am in receipt of your letter of April 16 in which you make request for an opinion on the following matter:

> "Are students who are away at school, and teachers who are away from home entitled to vote an absentee ticket? Are those that have lived here and removed to some other place but who have kept qualified at home entitled to vote an absentee ticket?"

In answering your first inquiry will say that under Article 4, page 602 of the Code of Alabama, Section No. 405, I am of the opinion that students who are absent from their county or state, but who are otherwise qualified to vote, may vote absentee ballots as prescribed under Article 4 of the Code supra.

In answering your second inquiry, I am of the opinion that under the law referred to above, any qualified voter who is absent from his county or state under condiitons stated in Section 405 of the Code, may also obtain an absentee ballot and vote as prescribed in Article 4 of the Code, page 602.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:ML
April 19, 1928.

Hon. J. P. Stiles,
Judge of Probate,
Birmingham, Alabama.

Dear Sir:

I have your letter of April 17, 1928, in which you request to be advised what fee shall be collected by the Probate Judge under Senate Bill No. 114, page 696, of the General Acts of 1927.

In reply to your letter I beg to advise that I have carefully read Senate Bill No. 114, page 696, of the General Acts of 1927, and I find no provision made for the collection of a fee for recording and returning the certificates referred to in said act. This being the case, I am of the opinion that the fees to be collected by you would come under Sub-division 22, of Section 7285, of the Code of 1923, that is fifteen cents per hundred words for recording the certificates.

Trusting that this will answer your question, I am,

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:ML
April 19, 1928.

Hon. J. L. Draper, Clerk,
Circuit Court of Morgan County,
Decatur, Alabama.

Dear Sir:

Your letter of April 12th has been received. I note you desire an opinion from this office on the following matter:

> "When a defendant is sentenced in a misdemeanor to pay a fine and costs, and he appeals his case to the Court of Appeals and I make a record of the appeal and the case is affirmed, please write me where and how I get my costs for making the record of the appeal."

Under Section 3739, of the Code of Alabama, you are entitled to fifteen cents for each one hundred words for making transcript and certificate and should the case be affirmed by the Court of Appeals or by the Supreme Court, then you have a judgment against the defendant for the cost on which execution may issue.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:ML
April 19, 1928.

Hon. W. J. Jones,
County Superintendent of Education,
Camden, Alabama.

Dear Sir:

This is to acknowledge the receipt of your letter of April 9th, 1928.

You inquire whether or not the proceeds of the County Three Mill Tax levy may be used, or shall be used to meet interest bearing warrants issued by the County Board of Education for the benefit of a particular School District of the County, and where the County Board has pledged the proceeds of the special tax levy of the particular district as security for such debt.

I am of the opinion that so much of the proceeds of the County Three Mill Tax **must** be used, as may be necessary, promptly and fully to pay such warrants, in the event the special district tax should be insufficient to pay the warrants upon maturity.

In my opinion Section 284, of the School Code of 1927, specifically provides for such course.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
April 19, 1928.

Hon. Sam J. Sanders,
County Treasurer, Fayette County,
Fayette, Alabama.

Dear Sir:

I have received your inquiry of April 10th. You write as follows:

"I have been presented with a warrant issued by the commissioner's court of Fayette County, made payable to the Sheriff of said county amounting to $52.00, for expenses of sending for and bringing back a man named Hubbert charged with murder. This man was arrested in Georgia.

"Kindly advise me if this charge is legal against the county, also is it a preferred claim. Your usual prompt attention will be appreciated."

In reply to the foregoing inquiry I advise you that I find no authority of law which would authorize the Court of County Commissioners to pay the Sheriff for returning a fugitive to Fayette County. I find no local act creating a fund for this purpose in your county. The State has an appropriation which covers such items of expense as you mention in your letter. This appropriation is found in Section 17, page 686, General Acts, 1927. Said Act was approved September 7, 1927.

The Governor is authorized to disburse this appropriation, as his judgment dictates. Under an Executive rule, the State will not pay for the return of a person committing a misdemeanor, and will reimburse one for money expended in returning an absconding felon, only after legal proof of conviction of said felon.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:B
April 20, 1928.

Hon. David W. Crosland,
Judge of Probate,
Montgomery, Alabama.

Dear Sir:

I am in receipt of your letter of April 16th, in which you make request for an opinion from this office on the following matter:

> "May I ask you to advise me that when only one political party has entered a primary and when the County Executive Committee of that party presents to the Appointing Board of the county a list of names for appointment as officers to conduct the Primary Election, such as Managers, Clerks and Returning Officers, is the said Appointing Board required to name those submitted to it by said County Executive Committee or can the Appointing Board ignore any or all of said list so presented and name others in accordance with the discretion of said Board."

I am of the opinion, and so hold, that under Sections 442 and 616 of the Code of Alabama, the Appointing Board is required to select managers, clerks, etc., of elections, either Primary or General from the list presented by the committee or committees of the parties entering the Primary or General election.

These sections read as follows:

> "Section 442. Political parties furnish lists from which appointments are made.—Each political party or organization having made nominations may, by the chairman of its state or county executive committee or nominees for office, furnish the appointing board a list of not less than three names of qualified electors from each voting place, and from each of said lists an inspector and clerk shall be appointed for each voting place; provided, that where there are more than two lists filed, the appointments shall be made from the list presented by the two political parties having received the highest number of votes in the state in the next preceding regular election, if each of said parties present a list."
>
> "Section 616. List of election officers presented by candidates.—Each candidate for nomination may, at least twenty-five days before the primary, present to the county executive committee of his party a list

of election officers desired by him for any one or more of the districts, wards or precincts; and his county committee shall, so far as practicable, make up, from the list so presented to it, a list of names of election officers, six in number, for each district, ward or precinct, which it will nominate to the appointing board of the county for appointment as officers to conduct the primary election, and the county committee shall present the list so made up by it to the appointing board of the county, which appoints the election officers to conduct elections for state and county offices in November, or at any other lawful time, which appointing board from the list so presented to it by the county committee shall select and appoint officers to conduct the primary election, observing the rule as to representation wherever more than one party enters the primary and in the latter case if a county committee has not given a sufficient number of names for a box, then the appointing board shall supply the deficiency from electors of that party."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
April 25, 1928.

State Tax Commission,
Capitol.
Dear Sirs:

This acknowledges receipt of your letter of April 11th. You write as follows:

"Mr. R. L. Rumsey has a saw mill a few miles from the town of Kellyton for which he has taken out license under Schedule 122, Acts, 1919. He hauls the product of this saw mill as well as rough lumber which he buys from other saw mills to a planing mill owned by him at Kellyton. When this lumber is manufactured into merchantable form he sells the same both to dealers and consumers in carload lots and in small quantities.

"The question is what license or licenses should Mr. Rumsey pay. Is he due a wholesale lumber dealer's license, under Schedule 126, Acts, 1919; is he due a lumber yard license, under Schedule 125, Acts, 1919; or should he take out a license for a planing mill under the saw mill schedule, Section 125, Acts, 1919?

"The doubt in this case has arisen because of the decision of the Court of Appeals in the case of Nash v. State, 110 Southern Reporter, 797.

"Please advise us whether this case should be regarded by this Commission as authority to govern its action, and, if so, we would like to have the application of the decision to the case of Mr. Rumsey, as explained above."

In reply will say that, in my opinion, a saw mill license is not required

for operating a planing mill; nor is a wholesale lumber dealer's license required where the only lumber sold is the product of the seller's own saw mill. To be a dealer in lumber, one must buy and sell lumber. But, in my opinion, where one buys lumber in the rough, then dresses, or planes it and sells it, he is a lumber dealer; and, if he sells, at wholesale, to purchasers within the State, he is a wholesale lumber dealer within the meaning of Schedule 126 of the Revenue Act, 1919, although he changes somewhat the condition of the lumber after buying and before selling it. He is, in my opinion, both a buyer and seller of lumber and, therefore, a lumber dealer. A man may buy poor cattle, then fatten and sell them; and, the fact that he has changed their condition before selling, does not keep him from being a cattle dealer. But should he buy and kill and sell the beef, he is not, in my opinion, a cattle dealer in the sense the word "dealer" is used in the statute.

I differ from the decision by the Court of Appeals in the case of Nash v. State to the extent indicated. Planing mills do not convert lumber into something other than lumber. They do not manufacture anything. They simply improve the condition of the lumber. The planer does not manufacture lumber. The lumber is manufactured by the saw mill. Its condition is improved by the planer.

A person might buy green lumber, then kiln dry it, or otherwise dry it, before selling it, but, in my opinion, this drying would not keep him from being a lumber dealer.

As to a lumber yard, it is my opinion, a person may operate a lumber yard in selling lumber manufactured by himself as well as in selling lumber bought by him from another. The source of the lumber is, in my opinion, immaterial. The manner and place of keeping the lumber for sale determines the question as to license for lumber yard.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:LM
April 25, 1928.

Hon. G. W. Humphries,
Judge of Probate,
Bay Minette, Alabama.

Dear Sir:

I beg to acknowledge receipt of your letter of April 18, 1928, enclosing a copy of a resolution passed by the Court of County Commissioners of Baldwin County, Alabama, on the 26th day of October, 1926, relative to a bridge across Perdido Bay from Lillian, Alabama to Escambia County, Florida, in which Baldwin County agrees with Escambia County, Florida, to maintain half of the bridge, and jointly maintain the draw. You state in your letter that it is now the belief of the County Commissioners that two-thirds of this bridge is within Escambia County, Florida, and one-third of the bridge is within Baldwin County, Alabama, and you desire to be advised as to whether or not the Court of County Commissioners can make

appropriation or expend money for maintaining any part of this bridge lying within the State of Florida.

In answer to the above inquiry, I beg to call your attention to Section 6442 of the Code of 1923, which reads as follows:

> "The Court of County Commissioners of each county is invested with authority to purchase or establish toll bridges, free bridges, causeways and ferries, or free ferries, within their respective jurisdictions, as hereinafter provided, and may levy a special tax to purchase or build such bridges and causeways, when, in the opinion of such court, the public good requires it."

You will note upon the reading of the above section that the Court of County Commissioners can expend money for the establishment of toll bridges, free bridges, causeways and ferries within their **respective jurisdictions.**

I am of the opinion, and so advise, that this does not authorize the Court of County Commissioners to expend any of the county's funds outside of the limits of Baldwin County, and certainly when you cross the line into Florida you are not within your **respective jurisdiction.**

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:ML
April 25, 1928.

Mr. W. B. Thrash,
Tax Collector of Cleburne County,
Heflin, Alabama.

Dear Sir:

This acknowledges receipt of your letter of April 18th. You write as follows:

> "Pleace advise me if the Revenue Act requires me to furnish the taxpayer with a notice of the raise of the value of his property by the Board of Review?
>
> "Also, please advise me if I am required to give notice to all the 'Pick-ups,' or those who have failed to assess and which I have picked up and assessed."

In reply to your first question will say, Yes. You will find what is required by reading carefully Section 36 of the Revenue Act of 1923 (Acts, 1923, page 174), which is Section 129 of Allen's Compilation of the Revenue Laws of Alabama, 1923..

In answer to your second question will say, Yes. You will find what is required in such a case by reading carefully Section 39 of the Revenue Act, 1923 (Acts, 1923, pages 175 and 176), and Section 55 of Revenue Act, 1923 (Acts, 1923, page 181).

If you have Allen's "Revenue Laws of Alabama, 1923," the three sections referred to will be found as Sections 129, 134 and 157 of said book. What is to be done in each case is as clearly written in these sections of the law as I can write it. Hence, I am referring you to the sections containing the answers to your questions and the method of giving the notice.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell-B
April 27, 1928.

Hon. D. M. Slaughter,
State Fire Marshal,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of April 23rd. You write as follows:

> "Due to the fact that the fire escape laws of the State of Alabama, as covered in Sections 4048, 4049 and 4050, do not specifically name apartment houses more than two stories high, can I, as State Fire Marshal, compel a person to put a fire escape on an apartment house which is more than two stories high under the sections named above, or under Section 967 of the Political Code of 1923?
>
> "I will thank you to give me your opinion on this as quickly as possible."

In answering your inquiry I desire to call your attention to sub-divisions 4 and 5 of Section 954 of the Code, which reads as follows:

> "(4) Construction, maintenance and regulation of fire escapes."
>
> "(5) The means and adequacy of exits in case of fire from factories, asylums, hospitals, churches, schools, halls, theatres, amphitheatres, and all other places **in which numbers of persons live,** work or congregate from time to time for any purpose or purposes."

I also quote in this connection Section 967 of the Code:

> "Inspection by Marshal or Deputies; Order for Removal of Inflammable Materials.—The State Fire Marshal, his deputies or assistants, upon the complaint in writing of any citizen, or whenever he or they shall deem it necessary, shall inspect at all reasonable hours any and all buildings or premises within their jurisdiction. When any such officer shall find any building or other structure, which for want of repairs, **lack of sufficient fire escapes,** automatic or other fire alarm apparatus, or fire extinguishing equipment, or by reason of age or dilapidated condition, or from any other cause, is especially liable to fire and which is situated so as to endanger life or property, and whenever any such officer shall find in any building combustible or explosive matter, or inflammable conditions, dangerous to the safety of such building, he or

they shall order the same removed or remedied, and such order shall be immediately complied with by the owner or occupant of such premises or buildings."

In the quoted sections I find nothing that would prevent you as Fire Marshal, requiring fire escapes on apartment houses regardless of the heights of such buildings.

I am, therefore, of the opinion, that under the statutes a certain amount of discretion rests with the State Fire Marshal, and he may require the placing of fire escapes on apartment houses of more than two stories in height.

I further advise you that Sections 4048, 4049 and 4050 of the Code, are penal sections and provide penalties for the refusal to place adequate fire escapes on such buildings as are therein named.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:K
April 27, 1928.

State Tax Commission,
Capitol.

Dear Sirs:

This acknowledges receipt of your two letters of former date in regard to license on operating a slot device in connection with pay stations in telephone booths. You state that these slot devices used in such pay stations render no service for the money deposited. It is simply a convenient method of paying at a distance for the service desired. The service desired is performed at the central station in the usual way by an operator. There is, as we understand it, an electrical connection between the slot box and the central office by which the operator may hear the dropping of the coin. You desire my opinion as to whether or not the using of such a device requires a license under Schedule 73 of Section 361 of the Revenue Act, 1919.

In reply will say that, in my opinion, such a device is, in no sense, a "machine" and that it does not fall under the provisions of said Schedule 73. A child's metal bank is a slot device for saving small coins but is not a slot machine and hence does not fall under said Schedule 73.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:ML
April 28, 1928.

Hon. S. P. Rainer,
Judge of Probate,
Union Springs, Alabama.

Dear Sir:

I am in receipt of your letter of April 9th, in which you make request for an opinion on the following subject:

"The question has been raised as to the legality of the Court of County Commissioners paying for rights of way for State Highway within the corporate limits of a town or city. When a state highway is built through an incorporated town or city, should the county have the expense of securing the right of way or should the town or city bear such expense?"

The only section of the Code that I am able to find bearing directly on the question of acquiring rights of way is Section 51 (1331) Highway Code, which reads as follows:

"The right of way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the county in which such road or bridge is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right of way, the state through the State Highway Department shall have authority, at the expense of the county, to acquire such right of way, either by purchase or by the exercise of the right of iminent domain in condemnation proceedings, as is provided for under the laws of this State."

I think it is clear, from the above quoted section that it is the duty of the county in which the road or bridge is being constructed to secure the right of way and this would be true no matter whether the road or bridge be located within or without an incorporated town or city.

See Opinions, Attorney General, Nov. 5, 1927.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:LM
April 30, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

This will acknowledge receipt of your letter of April 24. You write as follows:

"Some confusion has arisen among the Tax Assessors of the State as to whether or not they are required to furnish the Abstract Book for

the Tax Collectors of the State of the taxes assessed against persons operating automobiles, or motor vehicles.

"The idea has arisen, on the part of some Collectors, that the Tax Assessors are required to furnish the Collector an Abstract Book containing all the assessments made to the Assessor under a provision of an Act of the Legislature of 1923, shown on page 288, Section 19, Acts of the Legislature of 1923, and that this Abstract Book had to be made on the same plan as the ordinary Collector's Abstract Book, prepared by the Assessors for the Collectors, which book contains a condensed statement of all the individual taxes assessed in a county.

"When this section is considered, especially as stated in the subsection (c) on page 289, and having regard for the fact that the ad valorem assessment of a motor vehicle is required to be made to the Assessor and the taxes paid to the Collector as a prerequisite to obtaining a license from the Probate Judge for operating the motor vehicle, and giving due consideration to the fact that the assessment and collection of ad valorem tax on motor vehicles is continuous from October 1 to September 30 of any year, wherever a license is desired to operate a motor vehicle, I have been unable to determine what kind of an Abstract could be made for the use of the Collector, and I am unable to see what real purpose such an Abstract Book would serve. I am unable to determine when, or how often, or how many Abstract Books would be required to be made during the year to be of any service to the Collector.

"The Collector, as you know, is required to make semi-monthly settlements of all taxes collected and these semi-monthly settlements go on to the close of the year so far as relation to taxes on motor vehicles.

"Is the Assessor required to make an Abstract Book of the Assessed motor vehicle taxes collected by the Collector, for the Collector?"

In answer to your inquiry I first desire to call your attention to subdivision c of Section 19, Acts, 1923, page 289, which reads as follows:

"(c). After the first day of October, 1923, motor vehicles within the meaning of the Act shall not be included in any assessment made by any person, firm or corporation as of the first day of October, 1923, or subsequent year; **and such motor vehicles shall not be considered as escaped property by reason of failure to include same in any tax return as of the first day of October, 1923, or any subsequent year, but shall be assessed as herein provided."**

It is manifestly clear that the Legislature did not intend that the Tax Assessor should include Motor vehicles in the Abstract Book provided by Section 43, 44 and 45 of the Revenue Act of 1923, because the Legislature provided different machinery for the assessing of motor vehicles for taxation by the hereinbefore quoted act and required the State Tax Commission by Section 18, Acts, 1923, page 288, to provide forms for the assessment of motor vehicles. This form so provided is a complete abstract of motor vehicles for the assessing and collecting of ad valorem taxes, and is a proper

apportionment of ad valorem taxes on all motor vehicles as referred to in Section 3040 of the Code of 1923, which reads in part as follows:

> "He shall also be entitled to receive two per cent on all collections made by the tax collector of special taxes, whether such special taxes be levied for the State or County, to be paid out of such special taxes. The tax assessor shall receive two percent commission on all special county or district taxes levied for school purposes; but he shall not receive such commissions on such special school taxes unless he has properly apportioned such special taxes. * * *"

The regular abstract book required to be made by the assessors for the use of the collectors is to be prepared and delivered to the collectors by the 15th day of September of each year. The assessment and collection of ad valorem tax on a motor vehicle is a prerequisite to the obtaining of a license from the Probate Judge for operating such motor vehicle. This assessing and collecting begins on October 1 of each fiscal year and continues to September 30. The transactions are without limit and it would be impracticable to endeavor to make an abstract book containing the account of such taxes and its preparation would serve no purpose to the collectors. There is no requirement of law making it a duty of the Assessor to make an abstract book for the use of the Collector, containing ad varolem taxes assessed against motor vehicles. The form prepared by the Tax Commission is a sufficient abstract of motor vehicle taxes and having assessed the ad valorem taxes on motor vehicles on the form prescribed, all the duties required of the Assessor as to the assessing of motor vehicles for ad valorem taxation have been fully met.

I, therefore, advise you that motor vehicles are not to be included in the Abstract Book which the Assessor is required to make under Sections 43, 44 and 45 of the Revenue Act of 1923, and that the form provided by the State Tax Commission is an abstract of motor vehicle assessments, and the apportionment of special taxes in said form meets all the requirements of Section 3040 of the Code, supra.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:K
May 2, 1928.

Hon. Will Elrod,
Chairman, Board of Registrars,
DeKalb County,
Fort Payne, Alabama.

Dear Sir:

This will acknowledge receipt of your letter of April 26th. You write as follows:

"A question has come up in the registration of voters that we desire your opinion upon, which is as follows:

"Voters who have heretofore registered, some of them before us and some before prior board of registrars appear now and say there is discrepancy between the receipt given them and the record made on the books and the real facts. For instance, a man who is sixty-five years old may show upon the receipt and upon the record to have been born at a date which would make him only thirty-five years old; or his name may appear on the receipt and on the record as John Brown when he says his name is Jim Brown.

"Question: Have we, as a Board of Registrars, any right to make corrections in these receipts and records, and if so do we have a right to make these corrections at any time except at such time as we are in regular session as set out in the Code? Of course, I understand that the correction could be made at times when we register voters merely by registering the voters. But what we want to know is whether this Board has authority to make these corrections now."

I am of the opinion that the Board of Registrars has no authority to meet for the purpose of correcting such errors as mentioned in your letter. See Reports of the Attorney General, 1920-22, page 433, and Reports of Attorney General, 1924-26, page 354. However, the Board of Registrars has the legal right to make corrections under Section 392 of the Code of 1923 as amended by the General Acts of 1927, page 276, when meeting for the purposes named in said section as amended by said Act.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:M
May 4, 1928.

Hon. W. R. Jordan,
Tax Assessor, Covington County,
Andalusia, Alabama.

Dear Sir:

By letter of former date you make the following inquiry:

"In case Textile Manufactories are exempt from County tax are they exempt from special district school tax?"

In reply will say that, in my opinion, Textile Factories are exempt from neither the Special County School Tax, nor from the Special District School Tax; both of which are levied by virtue of authority granted by amendment to the Constitution, and not by authority of the Legislature.

In asking the question which I have already copied above, I presume you have reference to the effect of the Act, which may be designated as Senate Bill 149, Acts, 1927, beginning at bottom of page 55. This Act reads, so far as necessary here to quote, as follows:

"To authorize counties and municipalities to remit certain taxes for the purpose of encouraging the building and extending and operating of factories for the spinning of thread and yarns, and the knitting and weaving of cloth and other fabrics of cotton and wool in this State, and plants for the purpose of building ships and factories for the manufacture of bags, wood pulp products, wooden cabinets and farm implements, or any other manufactured product.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. For the purpose of encouraging the building, extending and operating of factories for the spinning of thread and yarns and the knitting and weaving of cloth and other fabrics of cotton and wool in this State, and plants for the purpose of building ships, and factories for the manufacture of bags, wood pulp products, wooden cabinets, and farm implements, or any other manufactured products, the Court of County Commissioners, or other court having like jurisdiction, of any county, or the constituted authorities of any city or town in which it is proposed to locate or add to or extend any such factories or plants are authorized and empowered to remit the taxes assessed on such factories and shipbuilding plants and on all extensions or additions to any such factories or shipbuilding plants as are already built and operated, and on all buildings, works, machinery and other equipment of such factories or plants or additions thereto or extensions thereof, and on the lands on which such buildings, plants and factories or additions to or extensions thereof are located, and also on all the capital stock of such factories and shipbuilding plants or increase of such capital stock made for the purpose of making additions thereto or extensions thereof, for all county or municipal purposes for a period not exceeding five years from the date of the incorporation or organization of such factory or shipbuilding plant

or from the date of the completion of any such additions to or extensions thereof."

It will be seen from reading the foregoing quotation from said Act that it purports to authorize the Court of County Commissioners, or other Court of like jurisdiction, for the purpose therein stated, to remit the taxes assessed on factories for the spinning of thread and yarns and the knitting and weaving of cloth and other fabrics of cotton and wool in this State and certain other property there named, "for all county or municipal purposes for a period not exceeding five years from the date of the incorporation or organization of such factory," etc.

The questions to be answered are:

1. Does the tax "for all county purposes" which said Act purports to give authority to the Court of County Commissioners to remit, include the special county school tax of not over three mills, which the county by the amendment to the Constitution is authorized to levy?

2. Does the tax "for all municipal purposes" which said Act purports to give authority to the constituted authorities of any city or town to remit, include the special district school tax of not over three mills, which any school district, by said amendment to the Constitution of the State, is authorized to levy?

In answer to these two questions will say that, in my opinion, the Legislature did not intend to include in the taxes, which the Court of County Commissioners are authorized in said Senate Bill to remit, the Special School Tax of not over three mills, which the county was authorized to levy by said amendment; nor did it intend to include in the taxes which the constituted authorities of a municipality are authorized to remit, the special school tax of not over three mills, which a school district was authorized to levy and collect by said amendment to the Constitution of the State; although the corporate limits of the city and the limits of the school disrict should be the same.

It is further my opinion that, if it was the legislative intent to include such school taxes, then the Act designated as Senate Bill 149, is unconstitutional and void, and, therefore, could not have the effect of exempting any property at all.

The special county school tax of not over three mills, and also the special district school tax of not over three mills, are each levied and collected under authority of the amendment to the Constitution; and must be levied, and collected and used as provided in said amendment to the Constitution; and must be levied, collected and used as provided in said Amendment. The Legislature, in my opinion, was without authority to override any of the provisions of said Constitutional amendment. Its duty and its sole authority in the premises, was to provide, by proper legislation, for the carrying out of the Constitutional provisions. Any Act of the Legislature violating any of the provisions of the amendment to the Constitution would clearly be void.

Section 1 of said Amendment reads as follows:

"The several counties in the State shall have power to levy and collect a special county tax not exceeding thirty cents on each one hundred dollars worth of taxable property in such counties in addition to that now authorized or that may hereafter be authorized for public school purposes, and in addition to that now authorized under Section 260 of Article XIV of the Constitution; provided, that the rate of such tax, the time it is to continue and the purpose thereof shall have first been submitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election."

It will be noticed here that the several counties are authorized to levy and collect a special county tax, not exceeding thirty cents on each one hundred dollars worth of "taxable property" in such counties.

Before the county can levy and collect such tax "the rate of such tax, the time it is to continue and **the purpose** thereof shall have first been submitted to the vote of the qualified electors of the county, and voted for by a majority of those voting at such election."

It will be seen that the only property that the county, by said amendment, is authorized to levy such tax upon is the "taxable property" in the county, nothing more and nothing less. It does not authorize to levy and collect on part of the "taxable property" in the county; it does not authorize to levy and collect upon any property in the county other than the "taxable property" therein. It is perfectly clear, it seems to me, that should the Legislature undertake, in fixing the law to put into effect this constitutional amendment, to have such levy upon less property than is designated in such amendment, or upon more property than is designated in such amendment, such act would be in contravention of said amendment, and therefore, void.

It is true that the Legislature determines what shall be "taxable property." It did this by Section 5 of the Revenue Act, 1919 (Acts, 1919, pages 284, et seq), and by Section 2 of the Revenue Act, 1923 (Acts, 1923, page 153, et seq.). On examination of these two sections, it will be found that the property enumerated in said Senate bill is "taxable property."

By Article 12 of an Act approved September 26, 1919, the Legislature provided the means and the method of putting into effect all the provisions of said Amendment to the Constitution. This Act is known as the School Code. It is my opinion that this tax must be assessed and collected as provided by said School Code and that it must be devoted to "school purposes" as provided in said Constitutional Amendment, in said School Code and in the elections required. It is further my opinion that any Act of the Legislature which should undertake to give authority to a Court of County Commissioners to exempt from such special county school tax any part of the "taxable property" in the County would necessarily, contravene the Amendment to the Constitution and be void.

What has been said of the special county three mill tax is equally applicable to the district three mill school tax.

It is my opinion that said Senate Bill is not unconstitutional; that it was not the legislative intent to include in said Senate Bill the three mill county school tax nor the three mill district school tax. It is never considered that

the Legislature intended a meaning to an Act that would make it unconstitutional, if any other meaning can reasonably be given it. We think the Legislature intended, in speaking of county taxes, such taxes as are levied by the county by virtue of authority conferred by the Legislature, and in which the Legislature had authority to exempt property otherwise taxable, and not the taxes over which the Legislature had no control in the respect that such tax would be affected, if it fell under the provisions of said Senate Bill.

The County three mill tax and the district three mill tax are taxes which the Legislature has no authority to authorize or to forbid or to qualify. This power was taken out of the hands of the Legislature by Section 215 of the Constitution. By said Section 215 of the Constitution, the Legislature is limited in its authority to authorize counties to levy taxes. The county three mill school tax is outside of and beyond this limitation. The authority to levy and collect this tax is given to the county not by the Legislature, but by the amendment to the Constitution, to be exercised under the conditions named. The rate of this tax, within the limit named, to-wit, thirty cents on each one hundred dollars of "taxable property" in the County, the time it is to continue, and the purpose thereof is determined by a vote of the qualified electors of the county. The class of property upon which the levy shall be made is prescribed by said constitutional amendment, to-wit, "taxable property in the county."

Now, answering your question specifically, having given my reasons therefor, will say that, in my opinion, neither textile manufacturies, nor any of the other manufactories or plants named in said Act, designated as Senate Bill 149, are exempt from either the special three mill county school tax, or the district three mill school tax.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:LM
May 4, 1928.

Hon. S. M. Dunwoody, Commissioner,
Department of Agriculture and Industries,
Montgomery, Alabama.

Dear Sir:

I have your letter of April 16, 1928. You ask whether Section 197 of the Agricultural Code of Alabama of 1927 requires an inspection fee of one cent on each gallon of paint sold in Alabama, or whether said section requires an inspection fee of one cent to be collected on each gallon container filled with paint when sold in Alabama.

I am of the opinion that said section of said code requires you to collect an inspection fee of one cent on each gallon of paint sold in Alabama, and that this section of the Code requires that said fee be collected from the person who sells the paint.

The pertinent part of said Section 197 of the Agricultural Code of Alabama is as follows:

> "* * * the Commissioner shall collect an inspection fee of one (1) cent on each gallon of paint sold in Alabama, the payment to be made by the person first selling such paint in the state."

In my judgment, the purpose and intent of the law is to require that an inspection fee of one cent be collected on each gallon of paint sold in the State, no matter whether such paint is in containers larger or smaller than one gallon. It was the intent of the Legislature that the inspection be upon the total number of gallons sold.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
May 4, 1928.

Hon. E. T. Hill, Clerk,
Circuit Court of Lamar County,
Vernon, Alabama.

Dear Sir:

I have your letter of March 10th in which you make the following inquiry:

> "In case a party is convicted for the violation of reckless driving on some road other than a state maintained highway, are clerks supposed to pay the fines when collected to the State Treasurer?"

Section 47 of the Alabama Highway Code defines the word "highway" as follows:

> "Every way or place of whatever nature open to the use of the public, as a matter of right, for purposes of vehicular travel. The term 'highway' shall not be termed to include roadway or driveway upon grounds owned by private persons, colleges, universities or other institutions."

I am of the opinion that the maintenance of the highway by the State is not controlling, that is to say, it is immaterial whether the traffic violation mentioned occurs on a State or County Road.

I, therefore, advise you that a person convicted for the offense of reckless driving on a highway, as above defined, is subject to a fine, which fine the Clerk of the Circuit Court must pay to the State Treasurer, under section 106, Alabama Highway Code.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:L,
May 4, 1928.

Hon. L. B. Clark,
Clerk, Circuit Court,
Enterprise, Alabama.
Dear Sir:

I am in receipt of your letter of April 29th, 1928, in which you request my opinion on the following subject:

"When a party is indicted for a simple assault and battery and later convicted of this same charge when the evidence shows a weapon used should the clerk charge the $10.00 solicitor's fee as in an assault and battery or should he charge $15.00. In other words should the indictment charge an assault with a weapon in order to carry the $15.00 solicitor's fee."

When the indictment or complaint charges simple assault and battery the solicitor's fee under Section 3738 of the Code of 1923 is $10.00.

When the complaint or indictment charges assault with a weapon, and defendant is convicted, the fee is $15.00 under Section 3738, supra, but there could be no conviction for an assault with a weapon where the complaint or indictment charges simple assault.

Walker v. State, 73 Ala. 17.
97 Ala. 47.

The subdivision of Section 3738 of the Code of 1923 which regulates solicitor's fee in cases of assault where stick or other weapon is used reads as follows:

"* * * for each conviction of an assault, assault and battery, or affray, where a stick or other weapon is used—$15.00."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
May 5, 1928.

Hon. J. W. Henson,
Sheriff, Washington County,
Chatom, Alabama.
Dear Sir:

I have your communication of May 4, 1928, in which you state that the appointing board of elections of Washington County met on April 23rd, and appointed a full list of election officers for each box and precinct in Washington County at which time no list for such officers had been presented by the Executive Committee of any party. Then on Monday, April 30, 1928, seven days after the board had made and certified the appointments, the executive committee presented to the board a list of names from which it desired to have these appointments made. You inquire:

1st. Did the election board, in making the appointments on April 23rd act within its power.

2nd. Was the Executive Committee, under statement of facts above, entitled to have the board consider the list it presented said board on April 30, 1928.

Section 437 of the Code of Alabama, 1923, designates who shall compose the appointing board to select managers, clerks, etc., for elections. This section reads as follows:

> "Officers of Election; How Appointed.—The judge of probate, sheriff and clerk of the circuit court, or a majority of them, acting as an appointing board, must, not more than twenty nor less than fifteen days before the holding of any election in their county, appoint from the qualified electors of the respective voting places three inspectors and two clerks for each place of voting, and returning officer for each precinct, to act at the place of holding elections in each precinct."

Section 439 of the Code of Alabama, 1923, prescribes who shall compose said board, when the Judge of Probate, Clerk, or Sheriff or either of them is a candidate to be voted upon in said election. This section reads as follows:

> "439. When county officers not eligible on appointing boards.—When the judge of probate, sheriff, or clerk of the Circuit Court is a candidate for election to any office at that election, he shall not serve on the appointing board, The judge of probate shall certify to the register of the Circuit Court the fact of the candidacy of any member of the appointing board immediately after the certificate of nomination, or petition, as provided in Section 462, (372) of this code, is filed with him."

Section 442 of the Code of Alabama, 1923, prescribes how political parties shall furnish their lists of election managers, clerks, and returning officers to the appointing board. This section reads as follows:

> "442. Political parties furnish lists from which appointments are made.—Each political party or organization having made nominations may, by the chairman of its state or county executive committee or nominees for office, furnish the appointing board a list of not less than three names of qualified electors from each voting place, and from each of said lists an inspector and clerk shall be appointed for each voting place; provided, that where there are more than two lists filed, the appointments shall be made from the lists presented by the two political parties having received the highest number of votes in the state in the next preceding regular election, if each of said parties present a list."

1st. Section 437, supra, states that "the Judge of Probate, Sheriff, and Clerk of the Circuit Court or a majority of them" shall constitute such board, and that they **"must not more than twenty nor less than fifteen days"** before the holding of any election in the county, appoint from the qualified electors, etc. * * * election managers." The board is, by this provision limited

as to the time of appointment. It cannot appoint earlier than twenty nor less than fifteen days before any election.

The appointing board in your county, according to your statement, made these appointments on April 23, 1928, to hold the election at the general primary May 8th. The board made these appointments on the last day it could have made same. It could have made them five days earlier and been within its rights. It owed no duty to wait longer on any committee of any party. In fact, under the law, it could not postpone these appointments longer. Section 437, supra, says "must not more, etc." It was the duty of the executive committee, if it desired a voice in these appointments, to present them in the time prescribed. The board had no power to compel the filing of such list by the committee and if none was presented and the time limit for the appointment had been reached the board had the right to presume none would be filed and proceed to make the appointments. In so doing it is my opinion it acted within the plain provisions of the law when it proceeded on April 23, 1928, to make such appointments.

2nd. The committee, having waited until Monday, April 30th, to present their list, came too late and by its laches, in my opinion, waived any right to be heard at this time.

Section 616 of the Code of 1923 relating to primary elections, states that such list shall be presented to the executive committee of his party by any candidate who is to be voted upon in such election and this list shall be presented "at least twenty-five days before the primary." The committee of this party shall in turn present the same to the appointing board.

This twenty-five days given before the election was evidently intended to give the committee of his party ample time to present the list within the **twenty** days before the election at which time the appointment of managers, etc., may be made.

Section 604 of the Code of Alabama, 1923, provides that the laws applicable to general elections shall apply to primaries if not otherwise provided.

Under the law and for the reasons stated I am of the opinion that the managers, clerks and returning officers appointed by the appointing board of Washington County on April 23, 1928, are the legal and duly constituted authorities to hold the election and certify the results of the primary to be held in said county on May 8, 1928.

This opinion, of course, is based solely on the statement of facts given by you the correctness of which statement is assumed in the rendition of my conclusions.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:ML
May 5, 1928.

Judge Charles E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of March 10, 1928, enclosing copy of letter dated March 9, 1928, from Hon. W. L. Lee, Jr., Assistant Examiner, Department of Examiners of Accounts, in which Mr. Lee inquires whether or not the Commissioner's Court of Lee County had the legal right to remit the following taxes for the Pepperell Manufacturing Company:

General County	$811.05
General Road	405.52
General School	648.84
Total	$1,865.41

Mr. Lee states that said Company is not in a special school district.

There is attached to your correspondence an extract from the minutes of the Commissioner's Court of Lee County in substance remitting taxes assessed or to be assessed on the lands and buildings of the Pepperell Manufacturing Company as shown on the 1926 tax return filed in the office of the Tax Assessor, and on all its buildings, works, machinery, and other equipment of such factory for all county purposes, for and during the period of five years, beginning October 1, 1925, and ending September 30, 1930.

The Assistant Examiner states that the Tax Collector of Lee County has not collected the County taxes tabulated above.

The power given the Court of County Commissioners to remit certain taxes is governed by Senate Bill 149, Acts 1927, page 55.

In my opinion Courts of County Commissioners or other like governing bodies have no authority to remit special county school taxes or special district school taxes. This was not the legislative intent. If it was then the Act would be unconstitutional and void.

The special school tax amendment to the Constitution of 1901 is the authority for levying and collecting the special county school tax and the special district school tax. The Legislature cannot override the Constitution. The Constitution is the highest mandate of a sovereign State, to which all legislative Acts are necessarily subordinate.

The question propounded by you has today been ruled upon by this office in an opinion addressed to the Tax Assessor of Covington County, a copy of which I enclose herewith.

Answering specifically the question incorporated in your correspondence, I advise that, in my opinion, the Commissioner's Court of Lee County had the legal right to remit the general county and the general road tax above tabulated but did not have the legal right to remit the general school taxes in the amount of $648.84.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:LM
May 5, 1928.

Hon. S. M. Dunwoody, Commissioner,
Department of Agriculture and Industries,
Montgomery, Alabama.

Dear Sir:

I have your letter of February 25, 1928. In it you request that under authority of Section 31 of the Agricultural Code of Alabama, 1927, the Attorney General approve the appointment of Mr. Charles Hybart, Attorney, of Monroeville, Alabama, and you state that Mr. Hybart is to be employed as a special attorney for the Department of Agriculture and Industries to "file a bill of complaint in equity in the Circuit Court,* * *" for the purpose of enforcing tick eradication under the direction of the State Veterinarian and the Board of Agriculture. You further state that Mr. Hybart's fee as an attorney for the Department of Agriculture and Industries, under authority of Section 31 of the Agricultural Code, supra, is to be paid out of the appropriation to the Agricultural Department Fund, according to law.

Section 31 of the Agricultural Code of 1927 reads as follows:

> 31. "ATTORNEY GENERAL LEGAL ADVISOR: COMMISSIONER MAY EMPLOY ATTORNEYS.—The Attorney General shall be the legal advisor of the Department of Agriculture and Industries in matters relating to the powers and duties of the Commissioner and State Board of Agriculture. The Commissioner, with the approval of the Board and the Attorney General, may employ an attorney in any proceeding relating to the laws, powers, and duties of the Department of Agriculture and Industries, and compensate such attorney out of the appropriation to the Agriculture Department Fund.

Insofar as said Section of said Code seeks to make the Attorney General the legal adviser to the Department of Agriculture and Industries, said Act of the Legislature is but a legislative reiteration of the common law duties and powers of the Attorney General. In other words, it was unnecessary for the Legislature to pass an act making the Attorney General legal adviser to any department of state government, for by virtue of the very office itself, which is the only common law office re-created by our Constitution, the Attorney General now, as under the common law, regardless of any statute, is the chief law officer of the State, and the only officer empowered to represent the people in any suit or proceeding except where the Constitution or a constitutional statute may provide otherwise.

In creating the office of Attorney General under its well known common law designation, there were conferred upon it all the powers and duties of the Attorney General as known at common law, and the Legislature has no power either directly or indirectly, to strip the Attorney General of any of the powers and duties inherent in the office at common law, nor to authorize either directly or indirectly, the State Board of Agriculture or the Commissioner of Agriculture and Industries to represent the State in matters of litigation to the exclusion of the Attorney General. Those duties which devolve upon the Attorney General, as inherent in the office, are duties which

the Attorney General cannot avoid, and are duties which, he being a constitutional State officer independent of every other officer of State government in the discharge thereof, he cannot delegate to others outside of the Attorney General's Department to discharge. They must be discharged only by those subordinates duly and legally deputized by the Attorney General.

A reading of the debates of the Constitutional Convention of 1901 discloses clearly that it was the purpose and intent of the framers of the Constitution to re-create the office of Attorney General under its well known common law designation and invest it with all those powers and duties inherent in the office at common law, and make it independent of every other department, bureau, board or commission in the discharge thereof.

As to that part of Section 31, Agricultural Code of Alabama, 1927, providing that the Commissioner under certain restrictions, may employ an attorney in proceedings relating to the laws, powers, and duties of the Department of Agriculture and Industries, and compensate such attorney out of the appropriation to the Agricultural Department Fund, I am of the opinion that such part of Section 31 is unconstitutional and void, and that no part of the appropriation to the Department of Agriculture and Industries may be used in compensating attorneys thus employed to perform the duties of the Attorney General.

The following appropriation to the Insurance Superintendent of Illinois has been held unconstitutional and void by the Supreme Court of that State:

> "Fee for legal services, $4,000 per annum; * * * For traveling expenses of attorneys, court costs, In Re: prosecutions of violations of the insurance laws, $2,000 per annum."
>
> Fergus v. Russell, 270 Ill. 304.
> Ann. Cas. 1916 B, Page 1120, 1136.

The court in the case, supra, stated further, with regard to the appropriation of $15,000 to the Insurance Superintendent "for expenses of prosecution for violations of the insurance laws" that:

> "The use of any part of this sum for the purpose of employing attorneys to perform legal services would not be proper, and the Auditor should refuse to issue a warrant and the State Treasurer to pay the same for any such purpose."

The court reached its conclusion as to the validity of these appropriations for the purposes mentioned, on the theory, apparently, that this would be a violation of the inherent rights and duties of the Attorney General under a constitutional provision similar to that carried in the Constitution of Alabama.

For the reasons stated, because I consider Section 31 in the respect named, unconstitutional and void, I must decline to approve of the appointment of an attorney in the manner therein provided, to be paid as prescribed by said Section.

However, I will state, that under Section 861 of the Code of 1923 the Attorney General, with the approval of the Governor, may employ "such attorneys and counselors at law as he thinks necessary to the proper conduct

of the public business, * * *" and such attorneys act under the direction and control of the Attorney General as contemplated by Section 872 of the Code of 1923. Such attorneys are to be paid out of funds appropriated to the Attorney General's Department.

I shall be delighted to confer with you concerning the employment of Mr. Hybart under Section 861 of the Code of 1923, and if agreeable to the Governor, I will see that this is done. However, I should like to discuss it with you and the Governor in person at the Governor's office.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:B
May 5, 1928.

Hon. J. W. Arthur, Chairman,
County Democratic Executive Committee,
Shelby County,
Vincent, Alabama.

Dear Sir:

I am requested by you to render an official opinion relating to the absentee voters law in primary elections. You request my opinion as to whether or not an absentee ballot can legally be sent by the Probate Judge to one absent from the county without a written request from such absent voter.

By Section 678 of the Code of Alabama, 1923, the ballot is issued for an absent voter upon **his request.** By Section 683 of said Code, the application by such absent voter must be made in such form and in such manner as that it may be **"filed"** by the Judge of Probate.

In view of the aforementioned sections of the Code, I am of the opinion that the application made by the absent voter must be in writing, signed by him, and in such manner and form that it may be filed by the Judge of Probate when received.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:B
May 5, 1928.

Hon. W. W. Brandon,
Judge of Probate of Tuscaloosa County,
Tuscaloosa, Alabama.

Dear Sir:

I have your letter of April 20th, 1928, in which you inquire as follows:

> "What would be the effect of three first choice votes and only one second choice vote. In other words, if the second choice vote is cast should it be for three candidates where there are three places to be filled and twenty-three names on the ticket?"

In my opinion, if the elector in compliance with Section 636 of the Code of 1923 voted for as many candidates first choice as there were to be elected, the first choice ballot would not be invalid on account of his failure to express a second choice for as many as are to be elected, even though he did express a second choice for one candidate.

> "A ballot commonly known as a single shot shall not be counted. Where two candidates or more are to be nominated for the same offices, the voter must express his **choice for as many** candidates **as there are offices to be filled.**"
>
> Sec. 636, Code of Alabama, 1923.

However, it must be borne in mind that his second choice vote would be a "single shot" as to his second choice ballot, and his second choice ballot should not be counted.

An elector is given the privilege to vote first choice, conditioned upon his expressing a first choice vote for as many candidates as are to be elected. The same condition applies to his privilege of expressing a second choice.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:LM
May 7, 1928.

Hon. C. F. Winkler,
Judge of Probate,
Greenville, Ala.

Dear Sir:

You telephoned me this morning requesting that I send you a copy of an opinion rendered by the Attorney General's office construing the statutes relating to the numbering of ballots in primary elections.

I find that on August 4, 1926, there was an opinion rendered by this office to the probate judge of Henry County construing Sections 627 and 628 of the Code of Alabama, 1923, relating to this subject. However, the opinion, in my judgment, does not completely answer the question propounded by you, which is, as I understand it, whether or not, in primary elections, the ballots shall be numbered.

In Section 627 of the Code of Alabama, 1923, I find it said:

> "The ballot of every voter shall be kept secret and inviolate. As the inspector deposits the ballot, the name of the voter shall be checked off the official voting lists, **and no numbers or other identification of any kind shall be placed upon the ballot of the voter,** except that one of the inspectors, as he hands out the ballot to the voter shall initial the same on its back, and before depositing it in the ballot box, shall examine said ballot and see that it contains the initials aforesaid."

Section 628 of the Code provides:

"628. BALLOTS NUMBERED ON BACK BEFORE DEPOSITING.—**All ballots shall be numbered on the back thereof before being deposited in the ballot box** and a corresponding number be placed by the inspectors on a record to be kept for that purpose by them, which record shall be enclosed in a separate envelope and sealed and directed to the probate judge and filed with him by the returning officer, and be kept by the probate judge, to be opened only in the event of a contest."

I am of the opinion that it was the legislative intent that one of the inspectors initial each ballot on the back thereof as it is handed to the voter. The purpose of such a provision is, in my opinion, to prevent fraud, and properly to identify the ballot of the voter as it is deposited in the ballot box.

Opinion of Attorney General, August 4, 1926.

While there is an apparent conflict between Sections 627 and 628 of the Code as to the **numbering** of ballots, I am inclined to the view that the purpose and intent of Section 627 is to safeguard ballots from the placing of numbers or other identifying matter on same for private or personal purposes. When we read all of the sections of the Code relating to primary elections and consider them together, I believe the legislative intent is clearly expressed. I believe that both quoted sections of the Code have a definite field of operation.

I am of the opinion that Section 627 is not in conflict with Section 628, for the reason that, in my judgment, the provision of Section 628 inhibiting the numbering or identifying of ballots was intended to apply, **except as other wise provided** in Section 627.

Section 628 is **definite** and **specific in its provisions,** and but for these provisions there would be no method by which to identify definitely ballots in the event of a contest.

I am, therefore, of the opinion, that, in primary elections, all ballots, as they are handed out to voters, must be initialed by the inspectors as provided in Section 627, Code of Alabama, 1923, and each of such ballots must be numbered as provided in Section 628 of the Code of Alabama, 1923.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:ML
May 8, 1928.

Dear Sir:

There have been a number of inquiries submitted to me requesting my opinion as to the proper solicitor's fee to be charged on conviction of an attempt to manufacture or distill prohibited liquors. Some officials have labored under the impression that the proper fee is $30.00 while others have charged only $10.00 solicitor's fee in such instances.

I am sending this mimeographed opinion to you for your guidance, and it is being written for the purpose of clearing up the prior opinions written by the Attorney General's office on this subject.

On September 13, 1920, Attorney General Smith rendered an opinion to the Judge of Probate at Clayton, Alabama, holding that $10.00 is a proper solicitor's fee in cases of conviction of **having in possession prohibited liquors.**

On July 18, 1922, Assistant Attorney General Field wrote an opinion to Deputy Solicitor Nichols at Heflin, Alabama, construing Section 6634 of the Code of 1907 (Section 3738, Code of 1923) and the Act approved March 17, 1915, (General Acts, page 136) also Section 2 of the Act approved January 25, 1919, (General Acts 1919, page 7) as well as the Act approved September 30, 1919, (General Acts 1919, in conjunction with Section 6634 of the Code of 1907.) That opinion held that: Solicitor's fee of $30.00 should be charged on each conviction for violation of any law prohibiting or regulating the sale, barter or exchange of spirituous, vinous, or malt liquors or intoxicating drinks. It also held that there is no special provision in the statutes as to what the charge shall be for a solicitor's fee for prosecuting persons charged with having **liquors** in **possession,** and that therefore the proper fee was $10.00 "for each conviction of a misdemeanor not otherwise provided for." It held further that under the provisions of Section 6634 of the Code of 1907, the fee for each conviction of a **felony not otherwise provided for** is $30.00 and that, therefore, the solicitor's fee in convictions of **having in possession** a still is $30.00.

This opinion was written before the adoption of 1923 Code.

On June 9, 1925, Assistant Attorney General Johnson rendered an opinion to the Circuit Clerk at Fayette, Alabama, holding that under the provisions of section 3738 of the Code of 1923, an **attempt to distill** is a **misdemeanor,** and is a misdemeanor "not otherwise provided for in the schedule of solicitor's fees, and that, therefore, the proper fee in such a case is $10.00.

On October 24, 1925, Assistant Attorney General Johnson rendered an opinion holding the proper solicitor's fee under Section 3738 of the Code of 1923, in cases of conviction for **"having in possession prohibited liquors** to be **$30.00,** and in cases of conviction for an **attempt to manufacture prohibited liquors** to be $10.00." He cites the following decisions:

Berdeaux v. Davis, 58 Ala. 611.
Corkran v. State, 203 Ala. 513.
Also Code 1923, Section 3307.

This opinion was written after the Code of 1923 was adopted.

On May 6, 1926, Assistant Attorney General Knight rendered an opinion to the Circuit Clerk at Gadsden holding that a solicitor's fee of $10.00 is the proper fee in case of a conviction of an **attempt to distill prohibited liquors.**

On March 5, 1927, the Attorney General rendered an opinion (Rayburn) to the Circuit Clerk at Grove Hill holding that $10.00 is the proper charge for a solicitor's fee when the defendant is convicted of an **attempt to distill or manufacture prohibited liquors** or beverages, or for a conviction of any other misdemeanor, not otherwise provided for in the schedule of fees set forth in Section 3738 of the Code of 1923.

On September 8, 1927, the Attorney General rendered an opinion (Koonce) to the Circuit Clerk at Carrollton holding that where a person is

charged with **manufacturing prohibited liquors,** or **having a still,** and the solicitor recommends that the indictment be amended so as to charge the defendant with an **attempt to manufacture prohibited liquors,** and the defendant pleads guilty to said charge, and a fine is assessed, the proper solicitor's fee in such a case is $10.00.

On January 17, 1928, the Attorney General rendered an opinion (Brassell) to the Sheriff at Fayette, Alabama, holding that the proper solicitor's fee for a conviction for an **attempt to manufacture prohibited liquors** is $30.00. He cites an opinion rendered March 18, 1918, which is not in point and this opinion of January 17, 1928, **is recalled by me and should not be followed.**

On April 16, 1928, the Attorney General rendered an opinion (Haynes) to the Circuit Clerk at Decatur, Alabama, considering the above fee question thoroughly and holding that the proper solicitor's fee on conviction of an **attempt to manufacture prohibited liquors** is $10.00. This opinion refers to Sections 3307 and 3738 of the Code of 1923 and cites the following decisions:

Hutto v. State, 169 Ala. 19.
Corkran v. State, 84 So. 743.

This is the last opinion of this office bearing on this subject.

In my opinion the proper solicitor's fee to charge on conviction of an **attempt to distill or manufacture prohibited liquors** is $10.00 and is governed by that part of the schedule in Section 3738 which reads as follows:

"For each conviction of a misdemeanor, not otherwise provided for—$10.00."

Where one is convicted of **keeping, selling** or **having in possession** prohibited liquors unless there is some special provision otherwise, the following schedule governs:

"For each conviction of any law prohibiting the keeping, sale, or having in possession, spirituous, vinous, or malt liquors, not herein otherwise provided for—$30.00."

The last above quoted schedule is a revision by the Code Committee, apparently. The older schedule, still a part of Section 3634 is as follows:

"For each conviction for the violation of any law, prohibiting or **regulating** the sale, barter, or exchange of spirituous, vinous, or malt liquors, or intoxicating drinks—$30.00."

Therefore, the fee of $30.00 should be taxed in those cases of conviction of keeping, selling, having in possession, barter, or exchange of prohibited liquors, and convictions of any law **regulating** the sale, barter or exchange of spirituous, vinous, or malt liquors, or intoxicating drinks, and as stated above, a fee of $10.00 is to be taxed in convictions of an attempt to distill or manufacture same.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Note:
To all Circuit Clerks.

Written by Mr. Koonce:J
May 9, 1928.

Hon. G. L. Malone,
Judge of Probate, DeKalb County,
Fort Payne, Alabama.

Dear Sir:

I have your letter of April 23, 1928, in which you state that the Code of 1923, Section 3022, sub-section 7, provides that all persons permanently disabled, whose taxable property does not exceed $500 are exempt from the payment of poll tax. You request my opinion:

1. Should an exemption be given from payment of poll tax unless accompanied by a certificate of some reputable physician or Board of Health showing a permanent disability?

Construing Sub-Section 7, Section 3022 of the Code, it is my opinion that a person who represents himself as being permanently disabled and as not having property in excess of $500.00 is not entitled to exemption from the payment of poll tax unless the Judge of Probate is satisfied that such representations are true. If the Judge of Probate is satisfied from the nature of the disability that it is permanent, then no certificate from a physician or Board of Health is required, but if the disability is of such nature that the Judge of Probate cannot ascertain if it is permanent, he should require a certificate from a reputable physician or from the Board of Health.

Certain persons are exempt from the payment of poll tax, and the Judge of Probate is charged with the duty of exempting all such persons, upon application by them. The law presumes that the Judge of Probate will do his duty and exempt those persons who are entitled to be exempt and that he will not exempt any persons who are not so entitled.

22 C. J. 130.

In an opinion to the Judge of Probate of Etowah County, dated March 2, 1926, my predecessor held that a certificate was required from the County Health Officer as is required of persons applying for exemption from payment of peddlers license. The law expressly provides that a certificate be furnishd by persons applying for exemption from peddlers license. No such certificate is specifically required in a case such as you mention, and the question of exemption from poll tax is to be decided by the Judge of Probate. I therefore, overrule that portion of said opinion of March 2, 1926, which held that a certificate was required in all cases in which exemption is claimed from payment of poll tax on the ground of permanent disability, the same as in applications for exemption from payment of peddlers license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Knight:M
May 9, 1928.

Hon. M. A. Vickers,
County Superintendent of Education,
Heflin, Alabama.

Dear Sir:

I have your letter of May 5, 1928. You inquire as to the constitutionality of Act approved September 6, 1927 (Local Acts, 1927, page 373), insofar as said Act would vacate the office you hold as County Superintendent of Education under an appointment under the general law.

This Act provides for the election of a County Superintendent for your County at the general election to be held in 1928. The person elected shall begin his term of office **immediately** after the results of the election have been properly certified, declared, etc.

I am of the opinion that the Act to which you refer, **insofar as the same would interrupt the term of office for which you have been appointed,** is void.

The contract attached to your inquiry, entered into, evidently, under authority of the provisions of the General School Code of 1919 (Acts, 1919, page 583), and of the Act of 1923 (General Acts, 1923, page 748), witnessed your appointment to the office of County Superintendent of Education for Cleburne County, provides a salary and fixes the term of your appointment at five years; namely, from July 1, 1925, to June 30, 1930. Section 175 of the Constitution of 1901 provides for the removal from office of the County Superintendent of Education by the Circuit Court, or other court of like jurisdiction for the causes enumerated in Section 173 of said Constitution, saving the officer the right of trial by jury, and the right of appeal. The method of removal, impeachment, provided by the constitution is exclusive. Hence the Local Act of 1927, supra, which would have the effect of curtailing your tenure of office heretofore fixed by contractural appointment of the County Board, under the authority of the then existing law, is in patent violation of Section 175 of the Constitution, and is void in that respect. Such is the express holding of the Supreme Court of this State in the case of Petree v. McMurray, 210 Ala. 639, which holding has been reaffirmed in McMurray v. County Board of Education, 216 Ala. 144.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:J
May 9, 1928.

Hon. W. T. Harris,
Judge of Probate,
Marion, Perry County, Alabama.

Dear Sir:

I have your letter of February 21, 1928, in which you inquire as to the character of license tag to be obtained for what is commonly known as "drive-it-yourself" cars.

In my opinion, where such motor vehicles are hired to persons solely for private use the company owning the car should obtain a private tag. However, of course, if the motor vehicle is hired to a person to use as a taxi, or is used by the company as a taxi, which is not ordinarily the case with "drive-it-yourself" companies, then a taxi tag must be obtained.

Ops. Atty. Gen'l, 1922 to 1924, page 222.

The use to which the motor vehicle is put, or the kind of motor vehicle must determine the license to be paid thereon.

Ops. Atty. Gen'l, supra.

When a "drive-it-yourself" concern lets out a motor car to a person, it is usually under a contract, at a stipulated rate per mile for use, and the person renting the car from the company ordinarily, under the terms of the contract, assumes responsibility for the car during such time as it is in his possession under the contract, and to all intents and purposes for that time, such a person is virtually the owner of the car.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:LM
May 9, 1928.

Hon. G. W. Miller,
Clerk, Circuit Court,
Rockford, Alabama.

Dear Sir:

I have your letter dated April 27, 1928, in which you state:

"Please advise me if witnesses for the State should be paid their attendance out of the fine and forfeiture fund in bastardy prosecutions resulting in acquittal of the defendant."

I am of the opinion that the Act approved Feb. 18, 1927, regulates the fine and forfeiture fund of the various counties, and under it the costs in bastardy proceedings accruing at the instance of the State would be a proper charge against the fine and forfeiture fund in case of acquittal.

A bastardy proceeding partaking as it does of the nature of both criminal and civil proceeding, is termed quasi criminal.

State ex rel Washington v. Hunter, 67 Ala. 81.
Smith v. State, 73 Ala. 11.

Such proceeding is in the name of the State. The solicitor is required to prosecute the case, and witnesses are summoned in the name of the State,

and the costs should be taxed against the State in case of an acquittal. Such a matter comes within the provisions of the Act cited, which Act amends Section 4039 of the Code of Alabama, 1923.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:J
May 12, 1928.

Hon. Geo. H. Thigpen,
Superintendent of Isurance,
Capitol.

Dear Sir:

This acknowledges receipt of your two letters of March 5th.

In answer to your inquiries will say that the only retaliatory insurance provision of the law that the State of Alabama has, so far as has been called to my attention or so far as I have been able to find, is found in Section 8363 of the Code of 1923, which is the same as Section 4571 of the Code of 1907.

This section reads as follows:

> "Deposits, charges, and payments required by other states of insurance companies of this state, also required of insurance companies of such state.—Whenever the existing or future laws of any other state of the United States shall require of the insurance companies incorporated by, or organized under, the laws of this state, or the agents thereof, any deposit of securities in such state for the protection of policyholders, or otherwise, greater than the amount required for similar purposes from similar companies of other states by the then existing laws of this state, then, in every such case, all companies of such states establishing or having heretofore established an agency or agencies in this state, shall make the same deposit for a like purpose with the treasurer of the state, and shall pay into the treasury of this state the taxes, fines, penalties, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed by the law of such state upon companies of this state and the agents thereof."

The meaning of the foregoing section is, in my opinion, as plain as language can make it. There is no retaliation provided for except in cases where another state of the United States requires of the insurance companies incorporated by, or organized under, the laws of this state, or of the agents thereof, a deposit of securities in such state greater than the amount required for similar purposes from similar companies of other states by the then existing laws of this state. When such a requirement as to deposit of securities is made by the laws of another state, then, in every such case, all companies of such other states establishing or having heretofore established an agency or agencies in this state, is required, by said section of our law, to make the same deposit for a like purpose with the treasurer of

the State of Alabama and, in addition to making such deposit, such companies are required to pay into the treasury of this State the taxes, fines, penalties, license fees, or otherwise, an amount equal to the amount of such charges and payments imposed by law of such state upon companies of this state and the agents thereof.

It will be seen from a reading of said Section 8363 that the retaliation is based solely upon the fact that such other state is requiring a greater deposit of securities than is required by this State for similar purposes from similar companies of other states. When such a requirement as to deposit of securities exist in the law of another state then, and then only, does the retaliation provided by said section apply.

Further answering your inquiries will say that where a retaliatory tax has been paid not under protest, though erroneously paid, and the money turned into the State Treasury, there is no way now provided by statute, by which such money can be returned. Such being the case, the only way for such money to be returned is by an act of the Legislature hereafter enacted.—Section 72 of the Constitution of Alabama. Nor can any offset be allowed therefor in the collection of future taxes.—Shelton, Tax Collector, et al, vs. Blount County, 202 Ala. 620.

Further answering your inquiries will say that where such a tax has been erroneously demanded and has been paid to the Superintendent of Insurance, under protest, and the money is still in his hands, the superintendent should return the money to the payer.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:B
May 15, 1928.

Hon. W. J. Jones,
Superintendent of Education of Wilcox County.
Camden, Alabama.

Dear Sir:

I have your letter of May 8, 1928. In it you state that a special district school tax has been levied and is now being collected in District No. 23 in your county which tax is to be used in the erection of a school building. You also state that the building will not be erected for at least one year and that the tax is therefore, accumulating to the credit of the tax fund of said District No. 23. Upon this statement of facts you request my opinion.

1. Can the County Board of Education arrange for payment of interest on the balance to the credit of this account up to the time that the money in such account is to be used.

I understand from your letter that you desire to know if the County Board of Education can arrange with the bank to pay interest on the daily balances in the account, and on that assumption only is this opinion based.

In my opinion the County Board of Education can make such arrangement.

Section 94, School Code, 1927, contains the following:

"* * * County Board of Education may arrange if it deems practical and beneficial, for a payment of interest on daily balances of bank deposits of public school funds by the Treasurer of the Public School funds."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:L
May 15, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of May 5, 1928. In it you state that an Assistant Examiner of Accounts, Department of Examiners of Accounts, has filed with you his report of his findings on the office of the Sheriff of Dallas County, which report covers the period from August 1, 1926, to January 17, 1928, the time during which J. E. Gaddy, now a prisoner in the State penitentiary, was Sheriff of said County. In your statement of facts you show that an Assistant Examiner of Accounts has charged Gaddy with certain amounts of money due the State.

You request my opinion as to whether or not it is your duty to notify Gaddy to appear before you, the Chief Examiner, to show cause why the amount stated by the Assistant Examiner as due, should not be paid by him, in view of the fact that Gaddy is now prisoner in the State penitentiary.

I assume from the above statement of facts by you that Gaddy has not settled the amounts found due.

I am of the opinion that the notice provided by law should be given by you to Gaddy.

White vs. Underwood, 46 L. R. A. 706.

Section 750 of the Code of Alabama, 1923, covers the matter inquired of by you, and said section is as follows:

"750. Expense account not paid; proceedings to compel payments.—Unless the amount so found due the State or county is settled within ten days after filing the report, by payments to the state treasurer, or county treasurer as the case may be, said examiner shall issue notice to said officer requiring him to appear on a given date and show cause why said amount so due should not be paid. If the said amount is paid on or before the day set for the hearing then said docket shall be marked satisfied,

and if said examiner after consulting with the attorney-general decides the officer has valid and legal defense, and shows just cause why said amount should not be paid, then the examiner shall dismiss the case and so state on the docket."

Under the above quoted section, where a public officer's accounts have been examined by your Department under the authority given it, the law requires that the report of the examiner should be compiled in triplicate, and sworn to by the examiner making the investigation and that, where said report refers to State matters the examiner making the investigation shall render said reports to the head of the Department of the Examiners of Accounts within ten days after the completion of the work assigned. Where the investigation relates to county work two of the reports are to be made to the head of the Department of Examiners of Accounts, and the remaining copy is to be made to the Judge of the Circuit Court or court having like jurisdiction.

Section 746, Code of Alabama, 1923.

Upon the receipt by the Chief Examiner of said report, the Chief Examiner should note the date of the filing of same with him, and, if, within ten days after the filing of said report, the officer whose accounts have been investigated, has not fully paid the amount found due the State and County, the Chief Examiner must issue a notice to said officer requiring him to appear before said Chief Examiner on a date therein stated by said Chief Examiner to show cause why the amount or amounts found due should not be paid. If, on or before the day set for the hearing, the officer pays the amount due, then the Chief Examiner should mark his docket "satisfied". If, however, after issuance of the notice, and before the date set for the hearing the officer does not settle, and the hearing is had, then, after such hearing, the law contemplates that the Chief Examiner consult with the Attorney General as to whether or not the officer charged has shown a valid and legal defense to the charges against him, and has shown just cause why the amount or amounts should not be paid. Following this consultation, if the Chief Examiner decides that the officer has a valid and legal defense, and has shown just cause why the amount charged against him should not be paid, then the Chief Examiner should dismiss the case, and make the notation on his docket that the case is dismissed.

Sec. 750, Code of Alabama, 1923.

Consultation by the Chief Examiner with the Attorney General in my opinion is a necessary prerequisite to the Chief Examiner dismissing the case under the conditions set forth above. In other words, if he does not consult with the Attorney General, in my judgment, he cannot legally dismiss the case. Further I may say that it is my opinion that the law contemplates that the Chief Examiner be guided in such consultation, by the legal interpretations of the Attorney General, and, in fact, each Assistant Examiner, as well as the Chief Examiner is governed by the opinions of the Attorney General in findings and reports involving the legality of any payment or shortage.

Sections 750, 752, Code of Alabama, 1923.

Now, where the Chief Examiner has issued a notice to an officer charged with the wrongful receipt or disbursement of public funds, for said officer to appear before him, as prescribed by Section 750 of the Code, supra, for the purposes therein stated, and said officer has appeared, and has failed to produce a defense to the charges against him, or after all that is required to be done has been done, said officer fails to settle the amounts charged against him, then it becomes the duty of the Chief Examiner to certify such facts to the **State Auditor.** Upon such facts being certified fully to the State Auditor, it forthwith becomes the duty of the **State Auditor to notify** the Attorney General of the amounts due the State, and upon receipt of such notification by the Attorney General, in the manner provided, then it becomes the duty of the Attorney General to bring suit in the name of the State of Alabama, against said officer, and his bondsmen. You will observe from the above that the Attorney General sues in the name of the State of Alabama only for those amounts that are due the State. Now if the amount due by the officer is in favor of the County, the Chief Examiner does not certify the facts to the **State Auditor** but certifies them direct to the **Solicitor** of the circuit court, or other court having jurisdiction, and upon receipt by the Solicitor of the certificate of the amounts due the County, it becomes the duty of the solicitor forthwith to proceed to collect the same by suit against the officer and his bondsmen, for which additional service the solicitor is entitled to receive ten per cent of the amounts collected, to be paid out of the County Treasury immediately.

Section 751, Code of Alabama, 1923.

From a careful reading of Chapter 24, Code of Alabama, 1923, dealing with the Department of Examiners of Accounts, and its powers, duties and functions, in my judgment, there is clearly set forth therein, a **specific method of procedure** which must be followed in cases such as the one you describe, and, I am of the opinion that it is immaterial that Gaddy is now a prisoner in the penitentiary. You should serve notice on Gaddy through the President of the State Board of Administration, who has the legal custody of Gaddy. Upon receipt of such notice, it is the duty of the President of said Board to see that the prisoner is produced before you at the time set for the hearing. After such hearing you should proceed as indicated herein.

In the service of your notice upon Gaddy, there is no particular form to follow. However, the notice which you are to issue under Section 750 of the Code, supra, should carry, as essential elements therein, that his records and accounts have been examined by an Assistant Examiner of Accounts, Department of Examiners of Accounts; that as a result of said examination he has been found due the State or County, as the case may be, the sum set forth therein, stating the sum, and the same has not been settled by him within ten days after filing of said report.

I might say, further, that while the powers mentioned in Section 747 of of the Code as to the issuance of subpoenas, examination of witnesses, etc., are powers which are enjoyed by the Chief Examiner as well as by each Assistant Examiner, in my judgment, the notice referred to in Section 750

of the Code, Supra, is not of the nature of a subpoena, such as mentioned in Section 747 of said Code.

You will observe, also, that no where in the statutes relating to the Examiners' Department, is it provided that the Chief Examiner shall certify the findings of his Assistants or of himself to the Attorney General direct. The law requires that in State matters, the findings of the Examiner, after the procedure heretofore outlined has been followed, be certified to the Attorney General by the State Auditor, who receives his information from the Chief Examiner, Department of Examiners of Accounts.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
May 16, 1928.

Dr. Glenn Andrews,
State Prison Inspector,
Capitol.

Dear Sir:

I have your letter of March 20, 1928, in which you refer to Sections 4826, 4827, 4848, 4834, 4952 and 4859 of the Code of 1923. You enclose a copy of a form letter addressed to the sheriffs of the state.

Your form letter provides substantially as follows, to-wit: Foodstuff purchases for the use of prisoners confined in county jails must not, at any time, become mixed with foodstuff purchases for the use of others. The invoices must show that said foodstuff was purchased exclusively for the prisoners confined in the jails. Food for prisoners must be prepared and served separately, from food prepared and served to others than prisoners, and prisoners only may be permitted to partake of the food so served and prepared. Prisoners confined in jail, who are not chargeable to the State, may be fed along with those who are chargeable to the State. The number of all such prisoners together with the number of feeding days of said prisoners must be set out in the summary on the monthly itemized statement of food served the prisoners, and the daily per capita cost of feeding the prisoners, both state and others, may be ascertained by dividing the total cost of foodstuffs sold by the total number of feeding days of all prisoners fed. To ascertain the amount due the sheriff from the State for feeding prisoners chargeable to the State, multiply the number of days of confinement of prisoners chargeable to the State, by the per capita cost obtained as above suggested. Show said amount in the tabulation on the feed bill, with only the names of prisoners chargeable to the State appearing thereon. While the State requires that an ample ration of plain, wholesome food shall be served the prisoners confined in the jails within the State, yet it is not contemplated that the ration shall provide unnecessarily expensive food.

You desire an opinion from the Attorney General as to whether or not, under the authorization contained in Sections 4852 and 4859 as amended,

Code of 1923, you may promulgate and issue, as State Prison Inspector, certain rules and regulations hereinabove set out.

Section 4852, Code, 1923, reads as follows:

"Duties of Inspectors.—The State Prison Inspector shall inspect at least twice each year, if practicable, and as often as he may deem necessary, in person or by his Chief Clerk or Deputy Inspectors, every county jail, almshouse and every municipal jail or prison in any incorporated town or city in this State having ten thousand or more population, according to the last Federal census, and shall aid in securing the just, humane and economic management of all such institutions; shall require erection of sanitary buildings for the accommodation of the inmates of such institutions, and shall investigate the management of all such institutions and the conduct and efficiency of the officers or persons charged with their management. He shall require that the buildings and grounds of such institutions be kept in the best sanitary condition; make a report, etc., * * * together with such recommendations for the betterment of the conditions thereof as he may deem necessary."

Section 4859, Code, 1923, provides as follows:

"Rules and Regulations formulated.—The inspector may formulate and promulgate such rules and regulations as he may deem necessary with reference to hygiene, sanitation, cleanliness, healthfulness, **feeding of prisoners,** management and security of all jails, including town and city prisons, and almshouses and **such rules and regulations shall have the same force and effect as law."**

Section 4859, as amended September 6, 1927, reads as follows:

"The Inspector may formulate and promulgate such rules and regulations as he may deem necessary with reference to hygiene, sanitation, cleanliness, healthfulness, feeding of prisoners, management and security of all jails, including town and city prisons, almshouses and such rules and regulations shall have the same force and effect as law **provided that this section cannot be construed as authorizing the State Prison Inspector to require the sheriff to make out what is commonly known as the daily ration sheet or expense account."**

Section 4852 would be of no efficacy, without the authority contained in Section 4859. This last section provides an instrumentality through which, and by the operation of which, the information acquired as a result of working under Section 4852 is utilized pro bono publico..

The words "feeding prisoners" standing alone, as used in the above quoted statutes, would not authorize the Prison Inspector to make such regulations as contemplated in your inquiry, as this would concern cleanliness of such food. However, when these words are coupled with the words "management," etc., a broad and comprehensive power is thereby lodged with the State Prison Inspector. Moreover, Section 4859, as amended, which prohibits the State Prison Inspector from requiring the sheriff to make

out a "daily ration sheet," impliedly acquiesces in said Inspector requiring other reasonable record sheets, records and invoices to be kept by the sheriff.

In view of the foregoing, you are advised that the rules and regulations, a statement of the same appearing herein pertaining to the feeding of prisoners, are in accord with Sections 4852 and 4859, as amended September 6, 1927, and are entirely within the scope of the authority therein contained.

The other statutes which you quoted in your inquiry, are not germane to the instant inquiry, and, for this reason, are not discussed in this opinion. Said sections have to do with the duty of the sheriff rather than that of the prison inspector.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:B
May 17, 1928.

Hon. Wm. R. Roundtree,
Judge, Court of Common Pleas,
Selma, Alabama.

Dear Sir:

I have your letter of May 8, 1928, in which you state:

"The Legislature of 1923, created a Court of Common Pleas for Precinct 36, Dallas County, and that you desire to know just what the jurisdiction of this court is relative to infractions of the Highway Laws, and as to the mode of disposing cases arising under such laws, and where the fines go, and upon the above facts you request the opinion of the Attorney General as follows:

1. Has the Court of Common Please of Selma, Precinct Number thirty-six, Dallas County, jurisdiction to try cases arising under the Highway Code?

2. If it has not the jurisdiction to try such cases, would it be permissible on agreement to let parties appear in said court, accept fine and settle same?

3. Should the fines in such cases be remitted to the State Highway Department or deposited in the Inferior Court funds of Dallas County?

Answering your first inquiry will say that the Act of the Legislature creating the Inferior Court of Precinct thirty-six, Dallas County, approved August 28, 1923, is found in Local Acts, 1923, at page 88.

Section 1 of said Act confers on such court all the powers and jurisdiction of Justices of the Peace in said precinct, both criminal and civil. This naturally refers the criminal jurisdiction of this court to the general jurisdiction given Justices of the Peace, and as provided by the Code under Sections 3847, 3848 and 3849 of the Code of Alabama, 1923. These sections outline the powers and jurisdiction of Justices of the Peace. These sections read as follows:

"Section 3847. Justices of the peace shall have jurisdiction concurrently with the county courts of the following offenses, when committed within the territorial jurisdiction specified in the preceding section: Violations of Sunday, vagrancy, assaults, assaults and batteries, and affrays in which no stick or other weapon is used; and, when the value of the commodity which is the subject of the crime does not exceed ten dollars, of larceny, whether at common law or by statute, embezzlement and receiving stolen or embezzled goods, knowing them to be stolen or embezzled; and for failure to work on public road after legal notice, and of offenses for cruelty to animals, and of public drunkenness; and all local or special laws in conflict herewith are expressly repealed.

"Section 3848. Concurrent jurisdiction with county courts or courts of like jurisdiction, except as may be prohibited by the Constitution of this State, is conferred upon all justices of the peace and judges of inferior courts of this State in all cases, arising under the laws for the protection and preservation of the birds, game and fish. All courts, trying such cases shall make report to the state commissioner of conservation and shall remit fines to the State Treasurer, as now provided by law in the case of clerks of other courts. Persons convicted in such courts may appeal to the circuit court of the county, as in other cases of conviction."

"Section 3849. It shall not be lawful for any justice of the peace, or notary public, with the powers of a justice of the peace, to sentence any person to hard labor for the non-payment of costs."

It is my opinion that the court of common pleas referred to is without jurisdiction to try cases arising under the Highway Code, except in preliminary investigation.

Jurisdiction to try cases for infractions of the Highway law is not conferred by the above sections, and the Highway statutes are silent on this subject, and I am unable to find any other statute that confers any special jurisdiction to try such cases in the Court of Common Pleas of Precinct thirty-six, Dallas County.

Said Court of Common Pleas has only such jurisdictions as is now or may hereafter be conferred upon Justices of the Peace. Section 3847, supra, in outlining and conferring jurisdiction upon Justices of the Peace does not confer jurisdiction to try cases arising under the Highway laws. For this reason without the laws themselves give it jurisdiction they would have none. We are required to look only to the laws themselves, and the general jurisdiction of the Justices of the Peace to determine the jurisdiction of this Court. These are the only sources from which jurisdiction can emanate, so far as this court is concerned.

Section 105 of the Act approved Aug. 23, 1927, (General Acts 1927, at page 390), "Require justices of the peace to report all convictions had under the Highway Code to the Department," but does not confer jurisdiction upon such officers to try cases under the Highway Code. Jurisdiction must be apparent and cannot be supplied.

Ex Parte, 102 Ala. 671.
State ex rel Savary, 20 Ala. 19.

Answering your second inquiry, I am of the opinion that said Court of Common Pleas of Selma, having no jurisdiction to try cases, except on preliminary investigation as indicated, to attempt such by consent or otherwise would be equally illegal.

Answering your third inquiry, inasmuch as said Court of Common Pleas has no jurisdiction to try cases arising under the State Highway Code, its assumption of jurisdiction would be a void act, and all fines collected in such matters would be illegally collected. No legal remittance could be made to the State. Hence, I deem it unnecessary to answer your third inquiry.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Evans:LM
May 17, 1928.

Hon. George H. Thigpen,
Superintendent, Bureau of Insurance,
Capitol.

Dear Sir:

I have your letter of April 3, 1928. In it you call attention to Section 3 of an Act approved July 22, 1927, entitled "An Act in reference to and to further provide for the general revenue of the State of Alabama," (Gen. Acts, 1927, p.p. 148-153), which said section, you state, allows domestic insurance companies, in calculating the amount of premium tax due the state, to take credit for the amount of money loaned on real estate mortgages in Alabama. Your letter indicates that you are under the impression that said section of said Act became effective Oct. 1, 1927. You also indicate that there is a practice of domestic insurance companies paying such taxes at the end of the year's operations, instead of paying same in advance. In your letter you further indicate that you are under the impression that domestic insurance companies, in calculating the taxes due, are being permitted to take credit on business transacted on and after October 1, 1927, under Section 3, of said Act, supra. It appears further from your letter that some domestic insurance companies are not only claiming the credits specified in said Section 3 of the Act of 1927, supra, but are including money invested in mortgage bonds in calculating their premium taxes due the State for the year 1927.

Upon this statement of facts you request my opinion as to whether or not domestic insurance companies, in calculating the "premium tax" due the State for the year 1927, are entitled to credit on business transacted prior to October 1, 1927, and if so, may such companies include in the amount for which they take this credit, money invested in mortgage bonds, such as Alabama, Tennessee & Northern Railroad bonds, Alabama Shipbuilding and Dry Docks Company Bonds, etc.

In my opinion, such companies cannot take credit for the matters mentioned by you, for taxes due for the year 1927.

What you are pleased to call a "premium" tax is not a "premium tax" but is a tax on the privilege of doing business in this State. This tax is meas-

ured, with certain qualifications, by the amount of premiums received during the preceding year.

Under Schedule 59 of Section 361 of the Act approved Sept. 15, 1919, (Gen. Acts, 1919, p.p. 413-417), and under Section 3 of the Act approved July 22, 1927, supra, calendar year and fiscal year are the same, each beginning January 1 and ending December 31. The Act of 1919, supra, went into effect for the purpose of payment of the privilege tax on January 1, 1920, and until the passage and approval of the Act of 1927, supra, this yearly privilege tax was due and payable under the provisions of Schedule 59 of said Act of 1919. This privilege tax, both for foreign and domestic insurance companies, was under said schedule 59, payable **within the first sixty days of the calendar year** for the privilege of doing business in this State **during such calendar year.** In other words, the privilege tax, both for foreign and domestic insurance companies is payable in **advance,** and not at the **end** of the **ordinary** fiscal year, as you seem to indicate has been the custom.

The privilege tax for both foreign and domestic insurance companies, for doing business in this State during the calendar year 1927, was not due under the provisions of the aforementioned Act of 1927, because that Act was not passed and approved until after the privilege tax for such companies was due and payable. The privilege tax for 1927 was due under the provisions of the then existing law, which was, Schedule 59 of the aforementioned Act of 1919. The first privilege tax in such instances governed by the Act of 1927, is that privilege tax which is due within the first sixty days of the **calendar** year 1928, and is for the privilege of doing business from January 1 to December 31, 1928, and not for the privilege of doing business prior to that.

You will observe that the time when such privilege tax is payable, both under the Act of 1919 and the Act of 1927, is the same, both for **foreign** and **domestic** companies. They are both included in the same provision in each Act, and the provision as to time of payment of such privilege tax is the **same in each Act.** The provision is as follows in each of said Acts:

> "Every insurance company * * * * shall within the first sixty days of the fiscal year, file with the insurance commission a statement which shall show that the insurance company has complied with all the requirements of the law to authorize it to do business in this State, and shall also show the total amount of premiums received by it for business done in this State for the preceding fiscal year ending December 31st, less return premiums, which statement shall be verified by the affidavit of an officer of the company having knowledge of the facts and **shall at the same time pay to the insurance commissioner the following amounts:"**
>
> Following the foregoing provision, in each of said Acts, there is stated:
>
> 1. The amount to be paid by **foreign** insurance companies.
> 2. The amount to be paid by **domestic** insurance companies.

Observe that the time for making the return and paying the tax applies to "**every** insurance company."

Observe further that the tax, both on **foreign** and domestic insurance companies, is—

> "a tax or license for doing business in this State during the current year"

in both Acts for foreign insurance companies. Also that in both Acts for domestic insurance companies the tax is stated—

"as a tax for the current year"

or as a tax for its

"operation in this State."

This shows clearly that the tax is a **privilege** tax for doing business during the calendar year in which it is payable.

To summarize, the privilege tax for domestic insurance companies for the year 1927 was due within the first sixty days of the calendar year 1927, and is governed by Schedule 59 of said Act of 1919, whether it was paid when due or is still unpaid. The deductions provided for in Section 3 of said Act of 1927, have no application to the privilege tax due during the calendar year 1927, inasmuch as the privilege tax for the year 1927 was due within the first sixty days of the calendar year 1927, and the Act approved July 22, 1927, did not become a law until the privilege tax for the calendar year 1927 was due and payable. It therefore, follows, that no deductions are to be made from the privilege tax for the calendar year 1927 on account of any provision in the Act approved July 22, 1927.

You can readily see that to hold otherwise would be to give the Act approved July 22, 1927, a retroactive effect, and would be to relieve such companies of certain liabilities they are owing the State.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:B
May 17, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of March 2, 1928, with enclosure from the Commissioner of Maintenance of the State Highway Commission, who refers to you a letter from Hon. H. T. Brown, Mayor of the Town of Calera, Alabama. You invite attention to Section 106, of an Act approved August 23, 1927, known as "The Alabama Highway Code," which relates to fines and forfeitures collected upon conviction or forfeiture of bail of persons charged with violations of the provisions of Article II of said Act, constituting misdemeanors, and the authorities to whom such fines and forfeitures should be paid.

You request my opinion:

1. Has this matter been brought to issue in any court?
2. Shall municipalities of 2,000 population, or less, pay into the State Treasury fines collected for violations of traffic **ordinances** of towns within said classification?

This opinion will also deal with:

3. What authority, if any, under the Highway Code, is left to cities of over 2000 population, to adopt, enforce and regulate traffic?

4. Must cities of over 2,000 population remit to the State Treasury all fines and forfeitures collected for violations of the traffic laws or its ordinances relating thereto.

In answer to your first question, insofar as I am aware, the matter inquired of has not been brought to issue in any court.

In answer to your second question, I am of the opinion that municipalities having a population of 2,000, or less, according to the last or any subsequent census, Federal or city, must pay into the State Treasury the fines collected upon conviction of persons charged with violating the traffic ordinances of same, with exceptions hereafter noted.

Section 106 of the Act approved Aug. 23, 1927, known as "The Alabama Highway Code," provides in part as follows:

"Section 106. Fines and Forfeitures.—All fines and forfeitures collected upon conviction or upon forfeiture of bail of any person **charged with a violation of any of the provisions of this Article constituting a misdemeanor** * * * * shall be forwarded to the State Treasurer * * * * Provided that all fines and forfeitures collected by **recorders Courts** or **other municipal courts** for violation of **ordinances,** in cities and towns of **over** 2,000 population, according to the last or any subsequent census, **whether for acts constituting violations** of the **provisions** of **this Article or not,** shall be paid into the treasury of such municipality in which the same was collected."

Construing the quoted portion of Section 106, supra, and particularly, the first sentence thereof, in the light of other sections of the Act known as "The Alabama Highway Code, viz: Section 62, 77, 83 and 100, and in the light of Chapter 261, Code of Alabama, 1923, (Sections 6263-6270 inclusive), insofar as the provisions of Chapter 261 have not been repealed, in my judgment, the purpose and intent of the Legislature is clearly expressed to the effect that municipalities having a population of 2,000, or less, are not permitted to pass, enforce or maintain ordinances, rules or regulations, regulating motor vehicles, or their speed, contrary to the provisions of Article II of the Act approved Aug. 23, 1927, (The Alabama Highway Code), except as therein noted. By reference to the sections of the Act heretofore cited, you will observe the exceptions to the general provision of sub-section (a), Section 77, of said Act.

Of course, in those insances where the Legislature, by the Act approved Aug. 23, 1927, has given municipalities the right to pass, enforce and maintain ordinances on the specific matters contained in said Act, as exceptions to the general rule laid down in sub-section (a), of Section 77 of said Act, then, in my judgment, fines collected on conviction of persons violating such ordinances, would not be payable to the State Treasurer, for the reason that such convictions would not be for the violations "of any of the provisions" of Article II of the Act approved Aug. 23, 1927, (The Alabama Highway Code), but would be for violation of a city **ordinance,** which, by the terms of said Act, the municipality is given the right to adopt. Any other ordinances

on traffic matters which attempt to amplify, augment, or modify the provisions of Article II of said Act, in any particular, or which have the effect, directly or indirectly, of so doing, except that they be in strict accord with the exceptions provided in said Act, are "contrary to the provision of" said Article II of said Act, and therefore, have no force or effect.

The intent of the Legislature, as I see it, was that there would be uniformity in the traffic laws of the State, both rural and urban, and provision was carefully made for taking care of traffic situations existing in the cities and towns. Equally so, a careful reading of the Act convinces me that the Legislature entertained and expressed through its plan the intent to prevent speed traps.

I invite your attention also to the fact that the first sentence of Section 106 of said Act required payment of fines to the State Treasurer only where the convictions are for misdemeanors.

I do not wish to be understood as saying that fines collected in towns of over 2,000 population are, in all cases, to be paid into the municipal treasury, for such is not the case. By reading the last sentence of Section 106 of said Act, you will observe that in towns of this latter classification, only such fines and forfeitures as are collected by recorders courts or other municipal courts are payable into the city treasury, and then, only when the conviction is for violation of an **ordinance** of the city. In other words, if the fine and forfeiture is collected by any other court than the courts mentioned, or is collected for a violation of a State statute instead of an ordinance, in such instances the money is payable into the State Treasury.

In order to avoid any misunderstanding as a result of this opinion, I desire to explain that it is not my intent to hold that towns of 2,000 or less population, cannot pass ordinances, and that towns of over 2,000 population can pass them. No such provision is made by said Act. The instances in which municipalities are allowed to pass ordinance contrary to the provisions of Article II of said Act, if indeed they be contrary thereto, apply equally to all municipalities, and section 106 cannot be construed as authorizing any municipality to pass an ordinance contrary to the provisions of Article II of said Act, but said Section 106 simply regulates the character or kind of fines and forfeitures to be paid into the state or municipal treasury, and only such fines and forfeitures as are mentioned therein are payable into the respective treasuries.

Section 106 of Chapter 2 of said Act does not state that in any case, fines and forfeitures on convictions for violations of **ordinances** shall be paid into the State Treasury, nevertheless, other provisions of Chapter 2 of said Act do prohibit passing ordinances contrary to the provisions of said Chapter, with the exceptions noted therein.

That clause in the last sentence of section 106 of said Act reading "whether for acts constituting violations of the provisions of this Article or not," was not intended to confer upon municipalities, having a population of more than 2,000, the right, ad libitum, to adopt ordinances contrary to the provisions of Chapter 2 of said Act. The sentence in which this clause is found simply regulates the type of cases in which municipalities having a population of more than 2,000, may retain fines and forfeitures.

To summarize, you will observe by a careful reading of the provisions

of the Act approved August 23, 1927, known as the "Alabama Highway Code," that there is no legal objection expressed therein to towns and cities, whether they be under 2,000 or over 2,000 population, passing ordinances regulating traffic, so long as those ordinances are in strict accord with the provisions of Article II of said Act. However, if a town of over 2,000 population passes an ordinance which is in strict accord with Article II of said Act, and a person is tried for a violation of said ordinance in the recorders court or other municipal court, those fines are to be kept in the treasury of the city. Again, if a town of 2,000 population, or less, adopts as an ordinance some penal section of Article II of said Act, and a person is convicted in said city, of a violation of that ordinance, the fines collected under such conditions in cities and towns of this latter classification go to the State.

Now, further, where cities and towns, whether they be over 2,000 population or less than 2,000, adopt ordinances covering the matters which are specifically provided by exceptions in said Act that they may adopt and persons are tried for violation of such ordinances as these, the fines collected in such cases are kept in the city treasury regardless of the population of the town.

Again, where a person is tried in cities and towns, whether they be of over 2,000 population or less, for violation of any provision of Article II, instead of for violation of an ordinance, the fines in all cases go to the State regardless of the population of the towns.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:J
May 18, 1928.

Dr. Glenn Andrews,
State Prison Inspector,
Montgomery, Alabama.

Dear Sir:

I have your letter of May 11, 1928. In it you state that a question has arisen as to whether or not the charge for feeding juveniles under sixteen years of age who have been committed to the county jails for holding, shall be made against the county or against the State.

You further state that in the past such charge has been made against the County.

You request an opinion as to what is the law on the subject.

In my opinion the expenses of feeding juveniles under sixteen years of age who have been committed to the county jails for holding, should be charged against the county.

Chapter 100, Code of Alabama, 1923, (Sections 3528-3566, inclusive) deals with juvenile delinquents and the method of disposing of same.

Section 3554 deals with how and when juveniles may be committed to jail.

Section 3529 of Chapter 100, supra, provides:

"* * * All expenses necessary or appropriate to the carrying out of the purposes and intent of this chapter and all expenses of maintenance and care of wards of the court that may be incurred by order of the court in carrying out the provisions and intent of this chapter, shall be valid charges and preferred claims against the county and shall be paid by the County Treasurer when itemized and sworn to by the creditor or other persons knowing the facts in the case, and approved by the judge."

In my opinion a juvenile delinquent, or child as described in Chapter 100, Code of Alabama, 1923, is not a "prisoner" as that expression is used in the Act approved September 29, 1923, and Section 4859, Code of Alabama, 1925, as same are amended by the Act approved September 6, 1927, (General Acts, 1927, page 693).

A careful reading of Chapter 100, Code of Alabama, 1923, particularly Sections 3553, 3554, and 3557, shows clearly that where a child is committed to jail as a juvenile delinquent, the child is a **ward** of the court, and is not a prisoner in the general and accepted legal sense and hence the law as to feeding **"prisoners"** has no application to such juvenile delinquents, the expenses for the maintenance and care of which are proper charges against the county, and not the State, under authority of Section 3529 of the Code, supra.

A contrary opinion was written by this office on January 6, 1928, to the State Auditor, which opinion is hereby overruled, withdrawn, and should not be followed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:J
May 19, 1928.

Hon. Henry J. Law,
Commissioner of Finance,
State Highway Commission,
Montgomery, Alabama.

Dear Sir:

I have your letter of December 11, 1927, in which you invite my attention to Section 37 of an Act approved August 23, 1927, (Gen. Acts, 1927, p. 348).

You request my opinion.

1. Can the State Highway Department under Section 37 of the Act approved August 23, 1927, (Gen. Acts, 1927, p. 348) pay convicts for working overtime.

In answer to your question, I am one of the opinion that the State Highway Department cannot pay convicts for working overtime under Section 37 of the Act approved August 23, 1927, (Gen. Acts, 1927, p. 348), which said section reads as follows:

"Section 37. STATE CONVICTS MAY BE WORKED ON ROADS.—The State Highway Department may work convicts in the

construction or maintenance of public roads and bridges of Alabama, as may now or may hereafter be provided by law, or may work convicts in the construction, repairing, or maintaining public roads, or bridges by contract or agreement with the Board of Administration, as to the number of convicts required to do such work. Provided that the charge for labor of such convicts shall not exceed two dollars per day, and no other expense incurred by the use of such convicts shall be chargeable to the State Highway Department, except such necessary tools and implements used in the construction, repairing or maintaining of the public roads and bridges upon which the convicts are employed."

It is obvious that the Legislature has limited the Highway Commission, in the amounts to be paid convicts used in the construction, repairing or maintaining of public roads or bridges, for it uses the words:

"Provided that the charges paid by the Commission under contract with the Board of Administration for labor of such convicts **shall not exceed $2.00 per day,** and no other expenses incurred by the use of such convicts shall be chargeable to the State Highway Department."

I am not unmindful of Section 3627 of the Code of Alabama, 1923, which reads as follows:

"3627. CONVICTS ALLOWED TO WORK FOR THEMSELVES.—Convicts may be allowed to work for themselves after the performance of their daily tasks, in such manner as may be prescribed by the rules of the board, and the proceeds of such labor shall be disposed of as the board shall provide by rule."

But Section 37 of the quoted Act evinces a clear intent by the Legislature to repeal Section 3627 of the Code of Alabama, 1923, insofar as the same relates to the working of convicts by the State Highway Commission under the Act approved August 23, 1927.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:K
May 19, 1928.

Hon. R. E. Jones, Deputy Solicitor,
Cleburne County,
Heflin, Alabama.

Dear Sir:

I have your letter of May 7, 1928. In it you state that a sub-contractor placed the surface on a new State Highway in your section of the State, and that he maintained said road for some thirty days, under his contract with the State Highway Department; that he maintained said road until same was taken over by the State Highway Department; he used a tractor which was owned and operated by him to pull the road scrapes; that he paid no license or privilege tax on such tractor and had no tag for same; that the district

license inspector there cited him and later swore out a warrant for him for failure to pay said license or privilege tax and failure to secure a tag, whereupon, the sub-contractor contended that he is not liable for any tax, inasmuch as he was responsible for the upkeep of the road while operating the tractor, and said sub-contractor states that the position taken by him is followed by other contractors over the State. You further state that the license inspector contends that the sub-contractor is due the tax as is provided by Section 18 of the Act approved September 13, 1923, (General Acts, 1923, p. 288).

I understand that the matter is now in suspense on your agreement when the case was called for trial and you submit the opinion to the Attorney General for determination.

You request my opinion:

1. Under the facts stated above, should said sub-contractor be required to pay the license tax provided in Section 18 of the Code cited above?

2. Should said sub-contractor be required to secure a tag for said tractor?

In my opinion, answering both questions set forth above, the sub-contractor is liable for said license tax and should procure a tag for the tractor.

Section 18 of the Act approved September 13, 1923, supra, reads as follows:

"Section 18. 'Motor Tractors.'—For each motor tractor used on the highways of this State, shall be paid a license or privilege tax on one hundred dollars. Provided, however, that this license shall not be collected for a tractor when run on a highway to be transferred from one point to another for use on a farm, or when used on the highway for transferring what is commonly known as a 'portable saw mill' or a 'well boring outfit.' "

See also Section 22, same Act.

You will observe by reading carefully the above quoted section, that the only instances where said license tax is not chargeable are:

1. When the tractor is run on a highway **to be transferred** from one point to another **for use on a farm.**

2. When the tractor is used on a highway for transferring a portable saw mill or well boring outfit.

But the tractor used under such circumstances as set forth in your letter, in my opinion, does not come within either of the instances set forth.

However, where a tractor is used only in the construction of a road that has not been opened to the public, in my judgment the license tax mentioned in Section 18 of said Act, is not required. This, for the reason that, under such circumstances, a road has not become a highway of this State.

Where the tractor is used in the maintenance of a road that has been **opened to the public,** the tractor is subject to the license.

Opinion Attorney General, April 9, 1928.

Under the opinion cited above, it was held that a road does not become a highway within the meaning of Section 18 of said Act until it has been turned over to the State or County and accepted and opened for public travel.

Webster defines a "highway" as being:
"A road or way opened to the use of the public."

Section 81 of the Act approved August 23, 1927, known as "The Alabama Highway Code," relates to the offense of driving or operating a vehicle upon the roads or highways of the State, without a tag of the proper classification. Sub-section (n), Section 47, of Article 2 of said Act defines the word "highway" as follows:

"Every way or place of whatever nature open to the use of the public, as a matter of right, for purposes of vehicular travel."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
May 19, 1928.

Hon. Chas. E. McCall,
Chairman, Alabama Pension Commission,
The Capitol.

Dear Sir:

I have your letter of April 27, 1928.

You state that a pensioner has recently died, leaving surviving him a widow, who, at the time of the death of her husband, was confined in the Alabama Hospital for the Insane, and is at the present an inmate thereof, at the State's expense.

You invite my attention to the fact that our pension statutes make no provision for the issuance of a pension warrant to a person confined in the Insane Hospital as a patient thereof.

You request my opinion as to what disposition should be made of the pension warrant for the quarter next succeeding the death of the pensioner, under the facts and circumstances related by you.

In my opinion said warrant should be delivered by the probate judge to the legal guardian of the insane widow of the deceased pensioner.

Section 2969, Code of 1923, reads as follows:

"Should a pensioner die leaving a **widow** who would be entitled to a pension under the provisions of this article, or if there be no widow, leaving a minor child or children, or should a widow die leaving a minor child or children, the probate judge shall deliver the warrant of the next quarterly issue, succeeding the death of said pensioner, to the widow, or if there be no widow, to the minor child or children, of such pensioner, and should there be no widow or minor child of such deceased pensioner,

the probate judge shall endorse such fact on the pension warrant and collect the same and apply the proceeds, first to the payment of the burial expenses, and second, to the expenses of the last illness of the pensioner, attaching thereto a receipt or statement of payment of such expenses."

You will note from a reading of this statute that it applies to widows of pensioners, in a **broad** and **general** sense, without **qualification, limitation** or classification, other than being "a widow who would be entitled to a pension under the provisions of this article."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:J
May 21, 1928.

Hon. J. Z. Mims,
Clerk, Circuit Court,
Clanton, Alabama.

Dear Sir:

I have your letter of March 31, 1928. You state that on August 16, 1926, a criminal prosecution was begun in the Circuit Court of Chilton County against a certain party for the reckless driving of an automobile upon the highways of Alabama. You also state that on August 27, 1927, a similar prosecution was commenced against another party. On November 7, 1927, the first party pleaded guilty. On November 9, 1927, the second party pleaded guilty. The Court placed a fine of $5.00 against each of them. You state these offenses were committed before the present State traffic regulations became effective and that both prosecutions were commenced under the Code of Alabama, 1923. You say that the State Highway Department has demanded that you pay to them the $10.00 collected, as provided in the Alabama Highway Code. You request my opinion as to whether or not you should pay these fines to the State Highway Department or to the County.

I am of the opinion that you should pay the fines to the County.

The offense of reckless driving **prior** to "The Alabama Highway Code" was covered by Section 5449 of the Criminal Code of Alabama, 1923, for which offense the fine provided on conviction was **not less than** $10.00 **nor more than** $50.00. That offense is now covered by Section 49 of the Alabama Highway Code. The punishment prescribed for the first offense is:

"Imprisonment in the county or municipal jail for a period of not less than five nor more than ninety days or by a fine of **not less than $25.00** nor more than $500.00 or by both such fine and imprisonment."

Section 106 of the said Highway Code insofar as applicable here, is as follows:

"All fines and forfeitures collected upon conviction or upon forfeiture of bail of any person charged with a violation of any of the provisions of this article constituting a misdemeanor, shall be within

thirty days after such fine or forfeiture is collected forwarded to the State Treasurer."

Section 5531 of the Code of 1923, provides that:

"No penal Act shall take effect until sixty days after the approval thereof, **unless otherwise specially** provided in the Act."

Section 230 of the Alabama Highway Code specially provides when the provisions of the said Act shall take effect, as follows:

"Section 230. Be it further enacted: That this Act shall, except as may otherwise be provided for certain articles contained herein, go into effect on its passage and approval by the Governor."

At the end of said Act, I find this expression:
"Approved August 23rd, 1927."

In my opinion Sections 49 and 106 of "The Alabama Highway Code" became effective on August 23, 1927, the date on which House Bill 391 (The Alabama Highway Code) was approved by the Governor.

I am of the opinion that Section 106 of said Act has application only to offenses committed **after** the approval of the Act (House Bill 391) and has no application to instances of offenses committed prior thereto.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:LM
May 21, 1928.

Hon. W. M. Vaughan,
Judge of Probate,
Selma, Alabama.

Dear Sir:

I have your letter of April 30, in which you state as follows:

"The Becker Chemical Company of Cincinnati, Ohio, forwards a consignment of medicine to its agent in Selma for delivery to various customers from whom the agent has previously taken orders and forwarded to the said Becker Chemical Company.

The original package is broken when the agent received it and the various articles therein are then delivered by the agent to the persons from whom he has taken the orders. The agent collects the money and remits to the Company after deducting his commissions on his sales.

The Becker Chemical Company does not look to the agent for more than he is able to collect—some of the goods are sold on the installment plan. All goods not received by customer are forwarded back to the Company.

At no time does the title to any of the property become that of the agent."

Upon this statement of facts you request the opinion of the Attorney General as follows:

Does the agent come within the protection of the Interstate Commerce law, or is he due to pay the State of Alabama a Peddler's License?

Upon the statement of facts given by you, the agent delivering medicine previously ordered and shipped from the manufacturer in another State, and not resold, such agent is engaged in interstate commerce, and need not have a State License for selling and delivering medicine.

Wright's v. State, 8 Ala. App. 437, 63 So. 14.
Ballard v. Wrought Iron Range Co., 81 So. 429.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:K
May 21, 1928.

Hon. W. E. Merrell,
President, Board of Revenue,
Columbiana, Alabama.

Dear Sir:

I have your letter of February 15, 1928. In it you state that holders of county warrants issued by Shelby County to refund the county's debt, were notified to present said warrants for payment on the due date thereof, and that recently a thousand dollar warrant, with attached interest coupon for sixty dollars, was presented to the Treasurer of Shelby County with a demand for payment thereon, together with interest to the date of the presentation of the same. You also state that, upon presentation, the Treasurer refused to pay an amount in excess of the face of the warrant and the amount of the coupon, holding that said warrant would have been honored at any time after maturity, and that the owner of said warrant, by failing to present the same when due, forfeited any claim for interest after the due date of said warrant.

You request my opinion as to whether or not the County Treasurer was legally justified in the position taken by him under the facts stated by you

I am of the opinion that the County Treasurer properly refused to pay an amount in excess of the face of said warrant and amount of the coupon.

> "Where a debt is payable at a particular time and place, and the debtor provides sufficient funds at such time and place to pay the debt, it is generally held that such readiness to make payment, if maintained, amounts to a legal tender, and interest is accordingly denied during the time the funds are so held for the purpose of making such payment."
>
> 33 C. J. Section 150, page 244.

To like effect, see the following Alabama adjudicated cases, viz.:

Hasty v. Marengo County Bank, 89 So. 433, 206 Ala. 280.
Marengo County v. Earley, 96 So. 753, 209 Ala. 663.
Converse Bridge Company v. Geneva County, 163 Ala. 432, 453, 53 So. 196.
Commissioner's Court v. Moore, 53 Ala. 25.
Jeffersonian Pub. Co. v. Hilliard, 105 Ala. 576, 581, 17 South. 112.

Yours very truly,
CHARLIE C. McCALL,
Attorney General

Written by Judge Evans:ML
May 21, 1928.

State Tax Commission,
Capitol.
Dear Sir:

By letter of April 10, 1928, you request an opinion upon the following propositions:

1. Does the "fifteen per cent penalty which Section 25-b of the Motor Vehicle Act (Acts 1923, pages 294 and 295), provides shall be paid to License Inspectors, apply in prosecutions for violating the law as set forth in Sections 20, 21 and 24 of said Motor Vehicle Act.

2. If the license inspector is not entitled to such "fifteen per cent penalty in prosecutions for violations of the law as set forth in Sections 20, 21 and 24, is there any other provision of law which provides any pay for License Inspectors in prosecutions under said section.

In reply to your first question, will say that said Section 25-b, except the last sentence thereof, deals only with the duties of License Inspectors with reference to those who are delinquent in paying license due by them.

The "fifteen per cent of the penalty," there provided to be paid to the License Inspector, is where the License Inspector institutes a prosecution against such delinquent for failing to take out license as provided by law.

In answer to your second question will say that the last sentence of Section 25-b provides as follows:

"License Inspectors shall have the same power to arrest persons violating the revenue laws of the State, as is now vested in the sheriffs of the State, and shall receive the same fees for such service."

It will be seen from the foregoing that the License Inspector has authority to arrest any person violating the revenue laws of the State, and, when he does so, he is entitled to the same fees as a sheriff would be entitled to for like service.

The last sentence of said Section 21 provides as follows:

"License Inspectors are authorized to arrest any dealer making use of a demonstration tag except as provided in this section, and such in-

spector shall be allowed a fee of ten per cent of any fine or penalty imposed for violating this section by such dealer which fee shall be paid by the dealer in addition to the fine or penalty."

Other than the foreigoing provisions—one constituting the last sentence of said Section 25-b and the other constituting the last sentence of said Section 21, we know of no compensation to License Inspectors in prosecutions for violating the revenue laws of the State other than the "fifteen per cent of the penalty" provided in said Section 25-b, in case of prosecution instituted by the License Inspector against delinquents for failing to take out license as required by law.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:K
May 23, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of April 24, 1928, in which you state that the Assistant Examiners of Accounts, in their examination of the offices and books of the Tax Collectors of the different counties of the State have, in some instances, found that the collectors keep no cash book, or accounts, of the taxes collected by them.

Upon this statement of facts you request the opinion of the Attorney General as follows:

Is not the Tax Collector required, as a matter of duty, to keep an account book, or an account, showing definitely, clearly, accurately, and correctly, the real amount of all taxes collected by him, including interest?

After a careful review of the Code sections referred to in your letter and other statutes applicable to Tax Collectors I am unable to find any statute requiring a Tax Collector to keep or have any particular form of cash book or account book by name whereby an examiner can positively determine his collections.

However, in this connection I find a general statute which seems to me to answer the question submitted by you. This law applies not only to Tax Collectors but to all public officers in the conduct of their office. I refer to Section 2690 of the Code of 1923, which is as follows:

"Public Officers Shall Keep Complete Books, Papers, Etc.—All public officers and servants shall correctly make and accurately keep in and for their respective offices, or places of business all such books, or sets of books, documents, files, papers, letters and copies of letters, as at all times to afford full and detailed information in reference to the activities or business required to be done or carried on by such officer or servant, and from which the actual status and condition of such activities and

business can be ascertained without extraneous information; and all of the books, documents, files, papers, letters, and copies of letters so made and kept shall be carefully protected and safely preserved, and guarded from mutilation, loss or destruction."

This section of the Code, which applies alike to State and County officers, requires such officers to make and accurately keep in their offices or place of business all such **books, documents, files, papers, letters,** etc., as at all times to afford **full** and **detailed information** in reference to the activities or business required to be done or carried on by such officer or servant, from which the **actual status** and **condition of such activities and business can be ascertained without any extraneous information,** etc.

Therefore, if any tax Collector is guilty of violating any provision of the above referred Code section, he subjects himself to a criminal prosecution, some of which, if not all, would subject the Tax Collector to impeachment. Under Sections 173 and 175 of the Constitution, any of the wrongful or illegal acts of the Tax Collector above mentioned would certainly constitute "willful neglect" of duty or "corruption in office," either of which subjects him to impeachment before the Supreme Court of the State. It, therefore, seems it is the right as well as the duty of the Examiner of Public Accounts when examining the office and books of the Tax Collector with reference to their collections to call attention to those statutes which I have above referred to, and that if the Tax Collector is found to be violating these statutes, to report the matter to the proper prosecuting officers, and grand juries, so that the laws may be enforced.

Opinions, Attorney General, 1920-23, page 374.

Section 259, School Code, 1927, relating to the collection of the one mill county school tax, provides:

"The tax collector * * * shall keep said amount separate and apart from all other funds, and keep a clear and distinct account thereof * * *.

Section 287, School Code, 1927, relating to the special three-mill county school tax, and the special three-mill district tax, provides that the tax collector:

"Shall keep said amount separate and apart from all other funds and keep a clear and distinct account thereof, showing what amount is paid. * * *"

See also Section 288 and 289, School Code, 1927.

In my judgment, after a careful reading of the foregoing sections of the School Code, it is the duty of the tax collector to construct his books in such a manner as to comply with the law as to clear, separate and distinct accounts. His accounts should be so constructed as to render possible an examination of the affairs of his office in that regard without reference to any extraneous information.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:J
May 23, 1928.

Hon. Woolsey Finnell,
Highway Director,
Capitol.

Dear Sir:

I am in receipt of letter from Mr. Geo. L. Moulton, Assistant Engineer of the Highway Department, of February 3, 1928, with enclosures, in which he states that the Highway Commission has requested the officials of Morgan County, to furnish certain rights-of-way for the purpose of building a State Highway.

You request my opinion:

1st. Is it necessary for the Board of Revenue of Morgan County to furnish rights-of-way for the building of State Highways?

2nd. Does the Board of Revenue of Morgan County, possess the power to condemn property for the purpose of securing rights-of-way over which to construct a State Highway in said County?

3rd. Has said Board of Revenue the power to institute condemnation proceedings to condemn property within a municipality in order to furnish rights-of-way for a State Highway in said County?

In answer to your first question, I am of the opinion that the Board of Revenue of Morgan County, has authority, and it is the duty of said Board, to acquire, without expense, rights-of-way for a State highway in said County.

Prior to the adoption of the Act approved August 23, 1927, (General Acts, 1927, p. 348), Boards of Revenue or Courts of County Commissioners were given the right of "eminent domain for the purpose of establishing and changing public roads, bridges and ferries in their respective counties."

Sec. 1352, Code of Alabama, 1923.
Stout, et al. vs. Limestone County, 211 Ala. 227.

Section 31 of the Act approved August 23, 1927, (General Acts, 1927, p. 348), is as follows:

"Section 31. (1331) RIGHT-OF-WAY FOR ROADS; HOW ACQUIRED.—The right-of-way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the county in which such road is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right-of-way the State, through the State Highway Department, shall have authority, at the expense of the county, to acquire such right-of-way, either by purchase or by the exercise of the right of eminent domain in condemnation proceedings, as is provided for under the laws of this State."

The above section is mandatory upon the governing body of the county that it secure the rights-of-way deemed necessary by the State Highway Department for a road or bridge to be constructed under the provisions of the Act, supra.

It was not the legislative intent to take away from he governing bodies of counties the right of "eminent domain" conferred upon the counties under Section 1352 of the Code, supra. However, the quoted Section of the Act gives the State Highway Department (State Highway Commission) the authority at the expense of the counties to acquire such rights-of-way either by purchase or by the exercise of the right of "eminent domain."

In answer to your second question, I am of the opinion that the Board of Revenue of Morgan County, has the power to institute condemnation proceedings to acquire property necessary for a State Highway in said county.

Code of Ala. 1923, 1352.
Stout, et al. vs. Limestone County, supra.

In answer to your third question, I am of the opinion that the Board of Revenue is vested with the power, and it is its duty, to secure rights-of-way, and, if necessary institute condemnation proceedings, to secure such property in a municipality, for the purpose of constructing a State highway.

Prior to the Act approved August 23rd, 1927, (Gen'l. Acts, 1927, p. 348), Courts of County Commissioners and other like governing bodies with the **consent or permission** of any municipality, had the right, under Section 1367, Code of Alabama, 1923, to establish, construct and maintain any road, street or bridge within the corporate limts of a municipality, but since the approval of said Act, and particularly Section 31 thereof, it is **unnecessary** for the Board of Revenue of Morgan County, **to secure permission** of the municipal authorities of any municipality in such county, before instituting condemnation proceedings for the purpose of securing rights-of-way necessary to construct State highways. It is their **duty** to secure such rights-of-way.

Section 1367 of the Code of Alabama, 1923, is a discretionary statute, and has no reference to State highways as contemplated by the Act approved August 23rd, 1927 (Gen'l. Acts of 1927, p. 348). This Section of the Code uses the word "may" with the consent or permission of the governing body or council of any municipality. The word "may" when used in a statute usually indicates that the Act to which it refers is discretionary rather than mandatory.—Halfacre vs. State, 79 S. W., 132-133, 112 Tenn. 609, Vol. 3, Words and Phrases, 336.

The permission to be obtained under Section 1367, supra, by the Board of Revenue, or other governing body, from a municipality means county roads or lateral roads, and vests discretion in the municipal authorities. Section 31 of the Act approved August 23rd, 1927, uses the words "shall be acquired by the county in which such road is to be located." The word "shall," etc., **is** mandatory, **and must be complied with.** The word "shall" is **equivalent to** "must."

State, exrel, Gouge vs. Burrow
104 S. W. 526, 529, 119 Tenn.
376, 14 ANN. Case 809.
Three words and phrases,
506, Stern vs. Marcuse,
103 N. Y. Supp. 1026, 1027,
199 App. Div. 478.

The Legislature in creating the Highway Commission vested it with power to construct and maintain State highways, and it was not the legislative intent that the Highway Commission should in anywise be hampered in securing rights-of-way by Section 1367 of the Code, supra. The Legislature, therefore, provided the machinery by which rights-of-way might be more speedily obtained, and made it mandatory upon the Board of Revenue or other governing bodies of the counties, to secure such rights-of-way through municipalities, and it is obvious that it was not the legislative intent that such Boards of Revenue should secure permission from the municipal authorities when called upon to furnish rights-of-way to construct State highways.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:LM
May 23, 1928.

Hon. Calvin Poole,
Circuit Solicitor,
Greenville, Ala.

My dear Mr. Poole:

I have your letter of May 18, 1928. In it you state that some weeks ago you gave instructions to the Sheriff of Lowndes County to stop the operation of slot machines, commonly known as "Roscoes," and that your instructions were based on a construction of Section 4248, Code of Alabama, 1923. You further state that you have been informed by your deputy solicitor in Lowndes County that the State now has two license agents working in that territory and that they are collecting licenses, principally on "Roscoes," and that as a result of this, the parties operating these devices claim that they are doing so under the sanction of the law. You invite attention to an Act approved September 6, 1927 (Gen. Acts, 1927, p. 709), which Act is styled "AN ACT to prevent the fraudulent operation of slot machines, and coin receptacles, and to provide penalties for the violation thereof," which you say seems to be in conflict with Section 4248 of the Code of Alabama, 1923.

Upon the foregoing statement of facts, you request my opinion:

> Is there any provision of law authorizing the collection of licenses for the operation of "Roscoes" mentioned which would legalize the use of such machines in spite of Section 4248 of the Code?

I am of the opinion that there is no law in existence in this State authorizing the collection of a license for the operation of **such machines**, the collection of which license would have the effect of legalizing their use in the manner set forth in Sections 4247 and 4248, Code of Alabama, 1923.

> "* * * by the weight of authority the operating of slot machines * * * whereby small amounts are hazarded on the chance of winning a larger sum or value constitutes a lottery, regardless of the name by which they are called, or the method of operating them, even though the dis-

tribution of the prizes, is according to a regular order, or the player is informed before each operation thereof, what such operation will distribute, or is assured of an ordinary return for his money in addition to the chance of winning a prize."

38 C. J. p. 299, Paragraph 21—"Lotteries."
Johnson v. State, 137 Ala. 101.
Loiseau v. State, 114 Ala. 34.
Reeves v. State, 105 Ala. 120.

Our courts have held that there is no conflict between Sections 4247 and 4248, Code of Alabama, 1923, and under the decisions in the cases cited, supra, a slot machine is a lottery, where, in the operation of it, there is a consideration, a prize, and the element of chance.

Johnson v. State, supra.

Section 65, Constitution 1901, provides:

"Sec. 65. The Legislature shall have no power to authorize lotteries * * * for any purpose, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery * * *."

The Legislature has no authority to license slot machines or to authorize the carrying on of a lottery.

Loiseau v. State, supra.

If, in the use of a machine, a consideration is paid, and there is gambling, it is a lottery.

Loiseau v. State, supra.

"The various courts have formulated different rules for determining when a slot machine is a gambling device, but one which seems to have been accepted very generally, is that, where one who plays a slot machine stands to win or lose money, trade or checks, by hazard or chance, the machine is a gambling device."

Allen v. Com. (Ky.) 198 S. W. 896.
Loiseau v. State, supra, 62 Am. S. R. 84.

"The machine is a gambling device where its operation is such that, although the player in any event, will receive something, he stands to win something in addition."

Ferguson v. State (Ind. 42 L. R. A.), ns 720.

"* * * the court will inquire, not into the name, but into the game, in order to ascertain if it is prohibited, or if it has the element of chance."

17 R. C. L. p. 1211.

"* * * experience has shown that the common forms of gambling are comparatively innocuous when placed in contrast with the widespread pestilence of lotteries. The former are confined to a few per-

sons and places, but the latter infests the whole community; it enters every dwelling; it reaches every class; it preys on the hard earnings of the poor; it plunders the ignorant and simple.* * * That they are demoralizing in their effects, no matter how carefully regulated, cannot admit of doubt."

17 R. C. L. p. 1212.

The Act approved September 6, 1927, supra, was intended to apply only to the operation of those legitimate devices in which, or by the means of which, gambling was not carried on, and the Act has no bearing on devices of chance. Any other construction of said Act would make it unconstitutional.

Where a slot machine, within itself, or by virtue of the method or purpose for which it is used, whether the plan and agreement for its use be open and above board, or in secrecy, and by secret agreement, is, in fact, a gambling device, you may charge those connected with its operation with a violation of either Section 4247 or 4248 of the Code.

You will notice that the penalties under Section 4247 are much heavier.

I invite your attention to Section 4249, Code of Alabama, 1923, which states that grand juries have no discretion in finding indictments for violations of these laws.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:J
May 23, 1928.

Hon. O. E. Tompkins,
County Superintendent of Education,
Abbeville, Alabama.
Henry County.

Dear Sir:

You telephoned me today requesting that I advise you whether or not, under existing law, the County Board of Education has authority to appoint a principal for the County High School and in the contract for his employment to provide that such employment shall cover a period of more than one year.

The County Board of Education upon the written recommendation of the County Superintendent of Education, may appoint a County High School principal for the County High School, and may, if it chooses, provide in the contract for employment, that the term for which the principal is to serve shall be for one year, two years or more.

The law is silent as to the length of time for which a High School principal shall be appointed to serve.

You, of course, understand that after you have nominated the principal, and the County Board has acted on your nomination, the terms of the con-

tract are to be made known to the State Board of Education, which has the authority to approve or disapprove because of educational qualifications of the appointee, but for no other reasons.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:B
May 24, 1928.

Hon. G. C. Hughes,
Sheriff, Geneva County,
Geneva, Alabama.

Dear Sir:

I have your letter of April 7th.
You request my opinion:

1. What is the proper fee to be allowed a sheriff for serving interrogatories?

2. What is the proper fee for serving a scire facias notice?

3. In misdemeanor cases where defendants are convicted and fines are paid, would the cost of serving defendant's witnesses be a proper charge in the bill of costs?

In answer to your first inquiry, it is my opinion that under Section 7287, Code of 1923, the sheriff is entitled to a fee of $1.50 for serving interrogatories.

In answer to your second inquiry, it is my opinion that under Section 7287, Code of Alabama, 1923, the sheriff is entitled to a fee of $1.50 for serving scire facias.

In answer to your third inquiry, it is my opinion that under no circumstances or conditions would the cost of serving defendant's witnesses be a proper and legal charge in the bill of costs.

Section 3763, Code of Alabama, 1923.
Cohen v. Coleman, 71 Ala. 496.
Burgin v. Hawkins, Treas. 101 Ala. 326.

Payment of such cost is a civil obligation as opposed to a penal obligation. To require the defendant to pay, confess judgment, or be sentenced to hard labor in satisfaction for the cost of serving his witnesses, would be imprisonment for a civil debt and consequently, unconstitutional.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:J
May 24, 1928.

Hon. H. B. Gantt,
Sheriff of Covington County,
Andalusia, Alabama.

Dear Sir:

I have your letter of April 25th.

You request my opinion as to the proper procedure in the matter of moving county convicts, under an Act approved February 18th, 1927, which regulates the custody, care, maintenance and use of the county convicts by the counties of the State and by the State through the State Board of Administration.

Under said Act, which appears at page 52, General Acts of Alabama, 1927, the Courts of County Commissioners, Boards of Revenue or other like bodies of the several counties in the State, may, in the discretion of such governing bodies hereinbefore enumerated, deliver to the State Board of Administration, all county convicts sentenced to hard labor for the county, in like manner as now provided by law for the delivery of State convicts to the State Board of Administration.

In a county where the Court of County Commissioners or Board of Revenue has notified the State Board of Administration that the county convicts of said county will be delivered to said State Board of Administration, in conformity with the Act herein discussed, the sheriff of such county has nothing to do with the delivery of said county convicts. This matter is left entirely with the State Board of Administration. The clerk notifies the State Board of Administration of the county's custody of convicts to be delivered to the State, and the State Board of Administration is charged with the duty of transferring said convicts to their destination.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:ML
May 25, 1928.

Hon. S. M. Dunwoody,
Commissioner of Agriculture and Industries,

Dear Sir:

I have your letter of May 21st, 1928, in which you state that "the question has arisen as to whether or not public warehousemen of the State, who desire to operate under the United States Warehouse Act, in addition to their operations under Article 34 of the Agricultural Code of Alabama and other State laws, may not make a joint bond to the United States Government and State."

Upon this statement of facts you request the opinion of the Attorney General as follows:

Whether or not warehousemen operating under Article 34 of the Agricultural Code of Alabama, and who are also operating under the United States

Warehouse Act can make a joint bond payable to the State of Alabama and the United States?

In answering the above question I refer you to Sections 393 and 394 of the Agricultural Code of Alabama adopted by the Legislature of Alabama in 1927, which are as follows:

"393. Bond Required of Warehousemen.—In the event the Commissioner decides that such permit to operate a warehouse should be issued, he shall fix the amount of the bond which shall be furnished by said applicant and approved by the Commissioner prior to the issuance of said permit. Said bond shall be made with some surety company that has complied with the laws of the State of Alabama, and which has a reputation for promptly settling claims upon their merits, and shall be payable to the State of Alabama in such sum as the Commissioner may fix, but in no event to be less than Five Thousand ($5,000.00) Dollars, nor greater than Fifty Thousand ($50,000.00) Dollars. Said bond shall be conditioned upon the faithful performance of his, or its, duties as a public warehouseman for the period covered by said permit and for a faithful compliance with all laws, rules and regulations relating to the operation of a public warehouse."

"394. Extra Condition of Bond.—The bond required of an applicant for permit to operate a public warehouse shall also undertake to pay to the State of Alabama all expenses of any successful litigation which the State institutes to compel a compliance with the laws and rules and regulations relative to public warehouses, including the expenses of the employes of the Department and a reasonable attorney's fee. Any person aggrieved because of the negligent conduct of any public warehouseman may sue on said bond in his own name for a breach thereof until the penalty is exhausted. In the event the penalty is exhausted, the Commissioner shall require the filing of an additional bond, or revoke the permit heretofore issued."

After a careful reading of the above referred to sections, I am of the opinion that the amount of the bond is to be fixed by the Commissioner of Agriculture and Industries, but in no event less than Five Thousand ($5,000.00) Dollars, nor greater than Fifty Thousand ($50,000.00); that said bond shall be conditioned upon the faithful performance of his, or its, duties as a public warehouseman for the period covered by said permit and for a faithful compliance with all laws, rules and regulations relating to the operation of a public warehouse; and that the bond referred to is to be made payable to the **State of Alabama.** These statutes do not provide for any kind of a joint bond with the United States Government or anyone else, and no bond other than one made payable to the State of Alabama, can be accepted and approved by you.

It was clearly the legislative intent that the bond should be made to the State of Alabama, for the faithful performance of duties as a public warehouseman under the statutes of Alabama, and for the faithful compliance with the laws of Alabama, also the **rules** and regulations pertaining

to the operation of a public warehouse in Alabama made and promulgated by the Commissioner of Agriculture of Alabama, and not the United States Government.

See Opinion of Attorney General, Oct. 1st, 1927, page 198.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Brassell:J
May 25, 1928.

Hon. Pat Byrne, Sheriff,
Mobile County,
Mobile, Alabama.

Dear Sir:

I have your letter of May 1st, 1928, in which you state that you have captured several cars in your county, each car transporting five or more gallons of prohibited liquors, and the question has arisen as to the fees payable in such cases. As I understand it, you request my opinion:

> Is the officer capturing a car or other vehicle containing five gallons or more of prohibited liquors entitled to the same fee as is provided in that case where there is a conviction of a person captured in the act of manufacturing prohibited liquors?

In answer to your question, I am of the opinion that the officer is not entitled to the same fees provided in the case of a person convicted for the manufacture of prohibited liquors.

Section 4626 of the Code of Alabama, 1923, provides a fee of $50.00 to be allowed the sheriff or other person furnishing the evidence to bring about a conviction. This section of the Code has application only where there has been a conviction for the **distilling** of prohibited liquors, and has no application to transporting or possession of prohibited liquors.

Opinions of Attorney General, 1918-20, p. 159.
Opinions of Attorney General, 1924-26 pp. 269, 361.
Opinions of Attorney General, Series IV., p. 173.

If the **cars** were captured **while transporting** prohibited liquors they are contraband and are forfeited to the State, and the officer capturing them, upon the sale of such cars, would be entitled to the fees provided by Section 4782 of the Code of Alabama, 1923.

The automobile seized by the officer which contains prohibited liquors is proceeded against by an action in rem, the proceeds of the sale of such automobile are distributed by the Register of the Circuit Court in the county in which the condemnation proceedings are pending.

General Acts of Alabama, 1927, p. 715.
Report of Attorney General, 1920-22, p. 74.

Where an officer seizes prohibited liquors in quantities of five gallons or more, which liquors are at the time being transported by automobile or other

vehicle, said officer, for the seizure of said liquors, is entitled to fees provided by Section 4654, Code of Alabama, 1923. Said section is as follows:

> "4654. When an officer arrests any person in possession of an unlawful quantity or quantities of prohibited liquors, or of such liquors under conditions prohibited by law, then on the conviction of such party of a violation of a city ordinance or state law, whether in the recorder's court, or state court, possessing jurisdiction, **a fee for making the seizure** of the liquors shall be taxed up against the defendant, and paid to such officer as a part of the cost of the case **as follows:** If a seizure is made of **not less than one gallon,** nor **more than five** gallons of such liquors, the fee shall be **three dollars;** if the seizure be **more than five** gallons, **and less than twenty** gallons, the fee shall be **five** dollars, and if **more than twenty** gallons be seized, the fee shall be ten dollars."

You will note that the above quoted Section of the Code applies only to fees for the seizure of liquors, and does not apply to the seizure of cars or other vehicles.

Amiss vs. O'Rear, Sheriff, 104 South. 885.
Opinions of Attorney General, December 15th, 1927, p. 48.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:ML
May 28, 1928.

Hon. W. S. Sherrill,
Deputy Solicitor,
Limestone County,
Athens, Alabama.

Dear Sir:

I have your letter of May 16th, 1928, in which you state that the County Treasurer of school funds has filed his claim for the premium on his bond with the Court of County Commissioners. You also state that you can find no authority to pay this claim. Upon this statement of facts you request my opinion as follows:

> Does the county pay the premium on the bonds of a county treasurer of school funds?

In my opinion the county cannot pay the premium on the bond of a county treasurer of school funds. The School Code of 1927, expressly provides that such expense must be borne by the county treasurer of school funds, and not by the county.

Section 94, School Code, 1927, providing for selection of the County Treasurer of school funds provides:

> "The County Treasurer of school funds shall serve **without pay.**"

Section 298, School Code, 1927, provides:

"The county treasurer of school funds shall give a surety bond in such sum as prescribed by the Superintendent of Education, and such bond shall be approved by the State Superintendent of Education. Said bond shall be made in some reputable surety company authorized to do business in Alabama, **and shall be made at the expense of the county treasurer of school funds.**

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Note:

See later opinion June 6, 1928.

Written by Mr. Koonce:B
May 29, 1928.

Hon. R. E. Tidwell,
Superintendent of Education,
Capitol.

Dear Sir:

I have your letter of May 16th, 1928. In it you refer to Section 133, School Code, 1927, which provides that the trustees of a school shall be nominated by the "patrons" of said school. You request my opinion upon the following:

What is the legal definition of the word patron as used in section 133, supra?

In my opinion the "patrons" of a school, as contemplated by Section 133, supra, are only those persons **residing** within the definite territory served by it, who are parents, guardians or custodians of children of school age, who are required to attend the school.

Volume 3 of Words and Phrases, page 922 (second series), contains the following:

"In any year the 'patrons' of a school within Burns' Ann. St. 1908, Section 6417, providing for relocation of schoolhouses on petition by the patrons, are the legal patrons living in the district who were enumerated in that year, or who have made satisfactory proof that they were actually the parents or guardians or custodians of children of school age living in the district, though not enumerated. Persons who were living in a school district in July and August, and had children of school age whom they intended to send to school in the district the following winter, were 'patrons' within Burns' Ann. St. 1908, Sec. 6417, which provides for relocation of schoolhouses on petition by patrons. William v. Richardson (Ind.) 98 N. E. 1094, 1095."

Webster's International Dictionary, page 1052, contains the following:

"Patron, To be a patron of; to patronize; to favor."

The natural presumption is that the parents, guardians, or custodians of children of school age will take a greater interest in the school which such children attend than persons who do not occupy such relation of parent, guardian or custodian.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:B
May 31, 1928.

Hon. Chas. E. McCall,
Chief Examiner of Accounts,
Capitol.

Dear Sir:

I have your letter of May 8, 1928, in reference to feed bills of a sheriff and the result of an examination thereof. You state that, in an investigation of a sheriff's office, conducted by an assistant examiner of accounts with reference particularly to the monthly claims of said sheriff for money expended in the feeding of prisoners legally confined in the county jail, which claims were filed with the State Auditor, the assistant examiner of accounts finds:

1. That the sheriff produces no invoices, receipted bills, or supporting papers to sustain fully the items of expenditures which the sheriff has set forth in the itemized statement furnished under the law to the State Prison Inspector, and Court of County Commissioners or other like governing body.

2. That, for the reasons set forth, supra, the examiner finds a difference between (a) the amount and cost of foodstuff **served,** as shown on the itemized statement and (b) the amount and cost of **purchases** as shown by invoices and supporting papers on file in the sheriff's office, and furnished the examiner for investigation.

3. That there are prisoners in jail who have not been legally committed thereto.

4. That there are United States prisoners in said jail.

5. That there are county convicts held in said jail **after** date of sentence.

6. That there are prisoners held in said jail under sentence or order of juvenile courts.

7. That there are prisoners held in said jail under Sections 2798 and 4581 of the Code of Alabama, 1923.

8. That while the amount claimed as **expended** by the sheriff for food is within, or does not exceed 45 cents per capita, yet the per capita is in excess of the **average** amount expended **daily per capita** by sheriffs in the **different counties throughout the State.**

On the above statement of facts, you invite attention to the Act approved September 6, 1927 (General Acts 1927, p. 693), and request my opinion:

1. Should your examiner enter a charge against the sheriff in favor of the State for the **difference** between the amount shown as **expended** in the itemized statement referred to above, and the **amount on invoices and supporting papers?**

2. Should your examiner enter a charge against the sheriff in favor of the State for that amount evidenced by him for feeding prisoners as mentioned in paragraphs 3, 4, 5, 6 and 7, on your statement of facts above?

3. Is the sheriff chargeable with and due the State, the amount arrived at by the examiner **by estimate** and comparison with other claims of **other** sheriffs for feeding prisoners in **other** counties?

4. Is the sheriff chargeable with an amount, as due the State, arrived at as being above the general **state** average, where the claims of the sheriff under investigation are supported by vouchers, invoices, evidences of expenditures, where said expenditures claimed do not exceed daily forty-five cents per capita?

5. In the absence of any regulations promulgated by the State Prison Inspector prescribing particular kinds and quantities of foodstuffs to be used by the sheriff in feeding prisoners in jail, and considering the term "actually necessary," as used in Section 1 of the Act, supra, is there any authority of law for the examiner to determine as to amount due the State, any other amount than that which is in excess of the amount arrived at by examination of the vouchers, invoices and papers produced by the sheriff in support of the claim presented to the State? This last question, you state, is predicated upon the assumption that all persons held in jail as prisoners are legally confined, and the State is liable for their feeding.

In answering your first question, will say, my information is that the record sheet which the sheriff furnishes to the State Prison Inspector, the Court of County Commissioners, or other like body, sets forth in detail the foodstuffs served to **all** of the prisoners incarcerated in the jail during the time covered by the report, and does not relate solely to prisoners for the feeding of which the State is liable. I am also informed that this record sheet shows the amount of money paid for the items of foodstuffs set forth thereon. This record sheet is essential to a proper examination of the affairs of a sheriff's office in this regard. The examiner must use as the basis for his examination and determination of the proper amount chargeable by the sheriff in all cases, the invoives, receipts and other like supporting records on file in the sheriff's office for the period to be examined. This is all that the sheriff can be allowed for feeding prisoners, and he cannot be allowed this amount if he did not actually serve it. Hence, will state that I am of the opinion that where the examiner finds the invoices, receipted bills and supporting papers of the sheriff insufficient to sustain the itemized statement furnished by him to the State Prison Inspector, Court of County Commissioners, or other like governing body of the county, the examiner can allow, as a proper charge by the sheriff for foodstuffs served, only that amount shown by said invoices, receipted bills, etc.

In answer to your second question, I am of the opinion that the State is

not legally chargeable with the feeding of prisoners such as mentioned in paragraphs 3, 4, 5, 6, and 7, of your statement of facts, supra.

Op. Atty. Gen'l. 1922-24, p. 65.

In answer to your third question, I am of the opinion, that while an examiner may legally make an investigation along this line for **statistical purposes** for the State, the sheriff should have no monetary charges entered against him **computed on such a basis.**

In answer to your fourth question, I am of the opinion that while the examiners department has authority to make such an investigation for statistical purposes no monetary charges can be entered against the sheriff computed on such a basis.

In answer to your fifth question, will say that is is quite complicated, and I shall answer it by saying that, in my opinion, where an examiner is checking the feed bills of a sheriff to determine the proper amount chargeable by the sheriff against the State, for the feeding of those prisoners for which the State is liable, he must look into the invoices, recepited bills and other like supporting papers on file in the sheriff's office for the given period to determine, prima facie, the amount to which the sheriff is entitled, and he must compare the total amount of foodstuffs and payments therefor, as shown on said invoices, receipted bills, etc., with the sworn statement furnished the Auditor, and with the record sheet furnished the State Prison Inspector, Court of County Commissioners or other like governing body, and if, upon examination **of the whole,** he finds that a small amount of foodstuffs was served the prisoners for the feeding of which the State is liable, in any instance the **State** is chargeable only with that amount computed by the examiner as having been served **such** prisoners.

The examiner should obtain the itemized sworn statement presented by the sheriff to the State Auditor. He should check this statement with the receipts, invoices, and other like supporting papers on file in the sheriff's office which form the basis upon which the sheriff computed said itemized statement, and if the examiner finds that such receipts, invoices, etc., show a lesser amount purchased and paid for than the amount set forth in said itemized statement sent the Auditor, eliminating all other questions, the sheriff would be entitled to only such amount as shown by the invoices, receipted bills, etc. However, if the examiner finds upon examination of the itemized sworn statement sent the Auditor, and the receipts, invoices and other like supporting records on file in the sheriff's office, and the record sheet furnished by the sheriff to the State Prison Inspector, Court of County Commissioners, or other like governing body of the County, that a certain definite amount of foodstuffs were served those prisoners for the feeding which the State is liable, the examiner should ascertain from the records before him, by proper computation, the amount of money paid by the sheriff for such foodstuffs actually served **such** prisoners, during the stated period, and it is immaterial what amount the sheriff may have claimed or reported to any source, because the only proper amount which the sheriff can enter as a charge for which the State is liable for the feeding of prisoners, is that amount for foodstuffs actually **purchased, paid for, and served** to **such prisoners.**

Opinions Attorney General, 1920-22, p. 68.
Opinions Attorney General, 1924-26, p. 300.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Rayburn:LM
May 31, 1928.

Hon. H. Ross Gilliland,
Judge of Probate, Etowah County,
Gadsden, Ala.

Dear Sir:

I have your letter of May 26, 1928.

You request my opinion as to whether or not the county is required to purchase typewriters which are to be used exclusively in the transaction of official business pertaining to the Probate Office.

It is my opinion that the Court of County Commissioners or Board of Revenue must allow the Probate Judge reasonable expenses for a suitable typewriter or typewriters, which are used exclusively in the discharge of his official duties.

An Act approved September 6, 1927 (General Acts of Alabama, 1927, p. 693), reads as follows:

"That Section 9604 of the Code of Alabama of 1923 be and the same is hereby amended to read as follows: (9604). Stationery of officers paid for by county.—The Judge of Probate, Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or Custodian must be allowed reasonable expenses, for suitable books, **stationery,** postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expense for his seal of office, to be paid for by the county."

A typewriter is **"stationery"** within the statutory requirement, which is quoted, supra.

Opinions Attorney General, 1910-1912, p. 220.
Underwood Typewriter Co. v. Marengo County Bank, 82 So. 158.
Opinions of Attorney General, 1918, p. 396.
Opinions of Attorney General, 1919, p. 303.
Opinions of Attorney General, 1926, p. 297.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Haynes:AB
May 31, 1928.

Hon. G. W. Humphries,
Judge of Probate,
Bay Minette, Alabama.

Dear Sir:

I have your letter of May 26, 1928, in which you state:

> A person over twenty-one years of age and under forty-five years of age living in Alabama, had failed to qualify as a voter, moves from the State of Alabama to the State of Mississippi, and resides there for several years, then moves back into Alabama, and desires to qualify to vote.

You request my opinion:

> 1. May such a party vote, upon his return to Alabama, provided that upon such return he registers and pays the poll tax due from the time of his return to the present date?
> 2. What poll tax is due by such a party?

In answer to your first question, I am of the opinion that registration and payment of poll tax by such a party from the time of his **return** to date would not be full compliance with the law.

In answer to your second question, I am of the opinion that such a party must pay all poll tax accrued against him after he became twenty-one years of age, with the exception of such years as he was a citizen of the State of Mississippi.

Section 178, Constitution of Alabama, provides that before a person shall be eligible to vote at an election by the people, he

> "Shall have paid on or before the 1st day of February next preceding the date of election at which he offers to vote, all poll tax due from him for the year 1901, and for **each subsequent year.**"

A person desiring to exercise the privilege of suffrage in this State must fully meet the constitutional mandate, which does not permit him to disregard payment of his poll tax for any period of time, change his residence to another State, later return to Alabama, and begin poll tax payments from the date of his **return.** He must pay all poll taxes for that period during which he was a citizen of Alabama.

Opinions Attorney General, January 27, 1927.
Graves v. Eubanks, 205 Ala. 174.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. McCall:LM
June 1, 1928.

Hon. E. J. Garrison,
Judge of Probate,
Ashland, Clay County, Alabama.

Dear Sir:

I have your letter of May 9, 1928, in which you request my opinion as to whether or not the Court of County Commissioners of your county has authority to pay for telephone service for the county superintendent of education, whose office is in the court house.

I am of the opinion that it is mandatory that the court of county commissioners provide the county superintendent of education with telephone service necessary in the discharge of his official business.

Section 169, School Code, 1927.
Opinions Attorney General, May 2, 1927; March 17, 1927, and January 6, 1928.

Section 169, School Code, 1927, provides in part:

"The county board of revenue or court of county commissioners shall provide the county superintendent of education and his professional and clerical assistants with ample, convenient and comfortable office quarters. The county board of revenue or court of county commissioners **shall** also provide necessary furniture, office equipment, stationery, postage, forms and supplies **required** by the county superintendent of education and his assistants."

Manifestly, by the use of the several terms in the last sentence quoted above, the legislature has distinguished "office equipment" from "furniture" and from stationery, postage, forms and supplies. It is a matter of common knowledge that one of the necessary instruments of "office equipment" in every modern office, is a telephone.

"Office equipment" as here used does not mean "furniture," but such things other than furniture as are necessary fully to equip the office of superintendent of education in accordance with the duties required of that office.

Sub-section 16 of Section 6755, Code of Alabama, 1923, provides that the Commissioners Court shall have authority to procure and provide **telephones** for the office of the circuit judge, register of the circuit court, sheriff, jailer, tax assessor, tax collector and judge of probate, and provides the funds from which payment for such telephones shall be made and the conditions under which telephones may be installed. This section deals solely with **telephones** for the persons mentioned above.

Section 9604, Code of Alabama, 1923, as codified, provides that the Judge of Probate must be allowed reasonable expense for telephones, and a number of items mentioned in said section, which items of expense are to be paid for by the county. By an Act approved Sept. 6, 1927 (General Acts, 1927, p. 693), the Legislature amended said Section 9604 so as to include among officers to be provided with suitable books, stationery, postage stamps and **telephones,** in addition to the Judge of Probate—the tax assessor, tax collector,

register of the circuit court in equity, clerk of the circuit court, sheriff and county treasurer or custodian. The section, as amended, also provides that the expenses shall be borne by the county on the approval of the court of county commissioners or other like governing body.

You will, therefore, see by comparing Sub-section 16 of Section 6755 with Section 9604, as amended by the Act approved Sept. 6, 1927, supra, that specific mention of the word "telephone" in providing telephones for county officers has been made in the following instances, when reading said sections together on this point:

> The circuit judge, the circuit clerk, the register of the circuit court, the office of the sheriff, the jailer, the tax assessor, the tax collector, the judge of probate, the county treasurer or custodian.

We do not find the county superintendent of education mentioned in either of the above sections of the Code and therefore, must look to other law if we are to find authority for such an item. (Sec. 169, School Code, 1927).

By an Act approved August 2, 1927 (Gen. Acts, 1927, p. 218), more specifically, Act No. 210, H. 85 (by Rogers of Mobile), the Legislature sought to amend an Act approved Sept. 25, 1919 (Gen. Acts, 1919, p. 723), so as to make the provisions of said Act of 1919 apply to all county officers in **all** counties, said Act approved Sept. 25, 1919, being an Act to authorize courts of county commissioners or other like governing bodies in each county having a population of 45,000 or more, according to the last or any succeeding Federal census, to procure and provide telephones for certain offices therein mentioned. The Legislature evidently overlooked the fact that said Act approved Sept. 25, 1919, had been amended by an Act approved Oct. 6, 1920 (Acts 1920, p. 152), and that as amended this Act was revised and codified as Sub-division 16 of Section 6755, Code of Alabama, 1923, so as to eliminate the population restriction in the Act of 1919 and the amendatory Act of 1920, and so as to define the authority of the court of county commissiners or other like governing body in this regard in the matter of procuring and providing telephones for **certain offices,** and under **certain conditions** as specified in said sub-division 16 of Section 6755 of the Code, supra. The Legislature may well have amended said Code section instead of going back to the Act of 1919, no longer in existence at the time of the passage of the Act approved Aug. 2, 1927, supra. However, the fact that the Legislature passed the Act approved Aug. 2, 1927, supra, as an "amendment" to the Act of 1919, without reference to the amendatory Act of 1920, and the code section of the Code of 1923, of itself alone, does not make the Act approved Aug. 2, 1927, unconstitutional.

Harper v. State, 109 Ala. 28.

In the above cited case the court held:

> "But, it is clearly settled in this State that the Legislature may amend an original act which has been amended and repealed, and disregard the intervening amendatory and repealing act."

See also Wilkinson v. Ketler, 59 Ala. 306. State v. Warford, 84 Ala. 15.

The courts of this State have gone so far as to hold that the fact that the Act sought to be amended was unconstitutional, has no bearing upon the question as to whether the subject of the amendatory Act is expressed in its title, since the invalidity of the earlier Act does not prevent the words used in the title of the latter Act from carrying their accustomed signification.

Street v. Hooten et al., 131 Ala. 492,501.

However, the Act approved Aug. 2, 1927, supra, seeking to amend the Act approved Sept. 25, 1919, supra, is unconstitutional in part for another reason. The title to said Act approved Aug. 2, 1927, is as follows:

> "An Act to Amend an Act 'To authorize the Court of County Commissioners, the Board of Revenue and Road Commissioners, or like body, in each County in the State, to provide telephones for the offices of clerks and registers of the Circuit Courts, the office of the Sheriff, the office of the jailer and the Judge of Probate of their respective counties,' approved Sept. 25, 1919."

It is clear that nothing could be included in the body of the **amending Act** which could not have been included in the body of the **amended Act.** In the title to the Act **approved Aug. 2, 1927,** supra, there is no attempt to enlarge on the matters covered by the title of the **original Act of 1919.** There is no word, or provision, in the original Act of 1919 which could extend the authority to **offices other than those named in the title;** and to have done so in the body of the Act of 1919 would have rendered the Act unconstitutional to the extent of the offices not referable to the title of said Act, being to that extent, at least, in contravention of Section 45 of the Constitution.

The attempt, in the **body** of the Act approved Aug. 2, 1927, supra, to authorize the court of county commissioners to provide telephones in **other** county offices **besides** those mentioned in the title of said Act approved Aug. 2, 1927, is clearly in contravention of Section 45 of the Constitution of Alabama.

It is immaterial that the Legislature calls the Act approved Aug. 2, 1927, "An Act to Amend an Act." The Legislature speaks of it as an **amendment,** but it is not an amendment. There was nothing to "amend." The Act was dead. The Act approved Aug. 2, 1927, strictly speaking, is not a revival of a previous Act. It is an **adoption** insofar as **title** is concerned, of the title of the old Act. The new Act of Aug. 2, 1927, must stand or fall under Section 45 of the Constitution, **without reference to any prior Act.** If the **title** to the new Act differs from the **body** of the new Act, and the **body** of the new Act contains matters not referable to the title, then the legal right to put such matters in the body is to be determined solely by reference to this new Act and not to any other Act.

The title to this new Act of Aug. 2, 1927, supra, authorizes the court of county commissioners or other like governing body, in each county in the State to provide telephones for **only certain county offices** in each county in the State, while the body of the Act grants the court of county commissioners of other like governing body of the county, authority to procure and provide telephones for **all of** the officers and offices of the county. It will be readily

observed that the **body** of the Act is **broader** than the **title,** and therefore the Act is in direct violation of Section 45, Constitution of Alabama, 1901, insofar as the body of the Act extends to officers and offices not mentioned specifically in the title to said amendatory Act.

"We reaffirm the doctrine, heretofore declared by this court, that an amendment by reference to a number of a section in an Act, must be confined to matters which are germane to, suggested by, and supplemental to the subject of that section; otherwise it cannot be said that the subject of the amendatory Act is expressed in its title."

Ex parte Cowert, 92 Ala. 100.
See also State ex rel Troy v. Smith, Auditor, 187 Ala. 411,418.
Ex parte Thomas, 113 Ala. 1.
State v. Sayre, 118 Ala. 1.
Ex parte Pollard, 40 Ala. 99.
A. G. S. R. Co. v. Reed, 124 Ala. 252.

For the reasons stated above, I am of the opinion that said Act approved Aug. 2, 1927, is unconstitutional and void, and that the law controlling with regard to furnishing telephones to county officers other than the county superintendent of education, is sub-division 16 of Section 6755, Code of Alabama, 1923, which is not repealed, and Section 9604, Code of Alabama, 1923, as amended by the Act approved Sept. 6, 1927 (Gen. Acts, 1927, p. 693).

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 5, 1928.

Clerk of the Circuit Court,
Fayette, Fayette County, Alabama.

Dear Sir:

Prohibition Law Violators; Disposition of Solicitor's Fees; Reckless Driving; Public Drunkenness.

Opinion by Assistant Attorney General Brassell.

I have your letter of May 29, 1928, in which you state that two ladies have pleaded guilty of violating the prohibition law, and that you are in doubt as to how to dispose of their cases. You further state that you do not know the amount of solicitor's fees to be taxed in cases of public drunkenness and recklessly driving of an automobile.

You request my opinion:

1st. What is the procedure to follow in cases of women who have pleaded guilty of violating the prohibition law, and, who are unable to pay their fines?

2nd. What amount should be taxed as solicitor's fee, on conviction of reckless driving of an automobile?

3rd.. What sum should be taxed in the bill of costs as solicitor's fee on conviction of public drunkenness?

1. In answer to your first question, I am of the opinion that, when a person pleads guilty of violating the prohibition law, such person must pay the fine and costs, be imprisoned in the county jail, or sentenced to perform hard labor for the county.

Section 5290, Code of Alabama, 1923.
Biennial Report of Attorney General, 1918-20, p. 259.
Ex parte State, In Re: Pierce, 89 Ala. 177.

Under the common law a defendant was ordered "to stand committed to jail until the fine was paid" (Bishop on Criminal Procedure, Vol. 1, Sec. 1301), and he was released on the payment thereof. Our statutes are merely enlargements of this common law rule. The sentence is the only practical alternative where the fine is not paid or judgment confessed therefor. It is simply to enforce payment by compulsory methods.

2. In answer to your second question, I am of the opinion that the solicitor's fee on conviction of reckless driving of an automobile is ten dollars.

Sections 3328, 3738, Code of Alabama, 1923.
Opinions of Attorney General, April 16, 1928, p. 133.

3. In answer to your third question, I am of the opinion that the solicitor's fee on conviction of public drunkenness is ten dollars.

Section 3738, Code of Alabama, 1923.
Opinions of Attorney General, April 16, 1928, pp. 133, 190.

The cases mentioned in (1) and (2) supra, are misdemeanors "not otherwise provided for" and you should be guided in taxing solicitor's fees in such cases by Section 3738, Code of Alabama, 1923.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 5, 1928.

County Superintendent of Education,
Hartselle, Morgan County, Alabama.
Dear Sir:

District Tax; Elections to Consolidate Districts; Voting Places Required.

Opinion by Assistant Attorney General Koonce.

I have your letter of May 15, 1928, in answer to my letter of May 11, 1928. In it you state that after Florette District had voted the special district tax, petitions from the adjoining districts, Six Mile and Pines, were presented to the Board of Revenue asking that these districts be consolidated with the Florette District. You also state that neither Six Mile nor Pines District

was levying a district tax at the time of the presentation of the petition, but that an election was held to ascertain if the consolidated district, consisting of the Florette, Six Mile and Pines districts, should levy the district tax. You further state that the election carried by a vote of 114 to 80, but that the court held it invalid because only one voting place was designated by the Judge of Probate. Upon this statement of facts you request my opinion:

> Did the failure of the Judge of Probate to designate a voting place in each of the districts to be consolidated render the election void?
> In my opinion the election was invalid under this state of facts.

Section 275, School Code, 1927, contains the following:

> "When it shall seem desirable to enlarge any special tax district by consolidating with it any adjacent territory or district, which may or may not be levying any special school tax, County Board of Education may petition the Court of County Commissioners or other governing body to call an election in all of the districts concerned, including the special tax district proposed to be enlarged **to determine whether a special tax for a uniform rate and time shall be voted in each and every one of the districts.**"

Section 277, School Code, 1927, contains the following:

> "* * * **In the event a majority of the qualified voters in any of the districts or district and adjacent territory proposed to be consolidated shall vote against the proposed consolidation,** then said consolidation shall not be made and each district shall remain as before, and with the same taxing privileges."

Sections 275 and 277, supra, clearly show that an election shall be held in **each** district affected, when it shall seem desirable to enlarge any special tax district by consolidating with it any **adjacent territory** or **district,** which may or may not be levying any special school tax. The necessity for this is plain. If a majority vote of the consolidated district was all that was required then it would be possible for the special district tax to be levied on a district theretofore not having such a tax even though a majority of the voters of **such** district were opposed to such levy.

In an opinion rendered to the Judge of Probate of Marshall County, on March 17, 1927, this office held that an election must be held in **each** district when the County Board of Education desires to consolidate a district which is collecting a special three mill district tax with a district which is not collecting a district tax.

In an opinion to the Superintendent of Education of Dale County, on July 7, 1927, this office held that **separate** elections must be held in the tax district **and** the untaxed district when it is proposed to consolidate a district which is levying a district tax with a district which is not levying a district tax.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 6, 1928.

Judge of Probate,

Athens, Limestone County, Ala.

Dear Sir:

County Treasurer of School Funds—Premium on Bond. Section 298, School Code, 1927, cited.

Opinion by Attorney General.

I have your letter dated May 28, 1928, noted at the bottom of my communication dated May 22, 1928. You state that the County Board of Education elected a county treasurer of school funds, who has placed on file with you an account for the premium on his bond for the past four years.

You request my opinion:

Is the county liable for the premium on the bond of the county treasurer of school funds, under the above statement of facts?

I am of the opinion that the county is not liable for the premium on the bond of a county treasurer of school funds where his term of office began prior to the date the Code of Alabama, 1923, went into effect, to-wit, Aug. 16, 1924, but that where his term began on or after Aug. 16, 1924, by the provisions of Section 2658, Code of Alabama, 1923, the premium on the bond for the term of such officer is a proper charge against the county.

Opinion Attorney General, Feb. 27, 1926, Vol. 1, Office Edition, p. 102; i. d., p. 358.

Opinion Attorney General, Oct. 20, 1926, p. 17, Office Edition.

See also Opinion of Attorney General, Dec. 8, 1926.

See also Opinion of Attorney General, March 17, 1927, p. 385.

I am of the further opinion that where such officer's term began on or after the date the Alabama School Code, 1927, went into effect, to-wit, Sept. 30, 1927, under the provisions of Section 298 thereof, the county treasurer of school funds is personally liable for the premium on his bond.

Section 298, School Code, supra, to this extent repeals Section 2658, Code of Alabama, 1923, insofar as said Section 2658 applies to the county treasurer of school funds.

The Code of Alabama, 1923, went into effect August 16, 1924, instead of August 17, 1924.

The Alabama School Code, 1927, went into effect September 30, 1927, instead of October 1, 1927.

(See Acts adopting these Codes.)

No authority was vested in the Governor to proclaim the date said Codes should become law. The date of the Governor's proclamation in each instance governed as to the date from which these Codes should become effective. The

Acts adopting the respective Codes provided same should go into effect "on the thirtieth day after the date" of the Governor's proclamation announcing its publication.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 7, 1928.

Board of Revenue,
Shelby County,
Columbiana, Ala.

Dear Sirs:

Highways; Right of Way for Roads; How Acquired.
Opinion of Assistant Attorney General Smith.

I have your letter of May 28, 1928, in which you state that the State Highway Department is constructing a State Highway between the Town of Columbiana and Calera and within the corporate limits of Columbiana, and that the State Highway Engineers are demanding that a right of way be furnished by Shelby County for a drainage ditch across property, said drainage ditch leading from a culvert under said highway.

Upon this statement of facts you request the opinion of the Attorney General as follows:

Whether it is the duty of Shelby County to acquire said right of way for the construction of said State Highway or is it the duty of the Town of Columbiana.

I am of the opinion that it is the duty of the county to acquire the right of way referred to by you, without expense to the State. This situation is clearly provided for in Section 31 of the Alabama Highway Code (Act approved Aug. 23, 1927, Gen. Acts, 1927, p. 11), which is as follows:

"Section 31. (1331) Right of Way for Roads; How Acquired.—The right of way deemed necessary by the State Highway Department for a road or bridge constructed under the provisions of this article shall be acquired by the county in which such road is to be located, without expense to the State. Should the county fail or refuse to acquire the necessary right of way, the State through the State Highway Department shall have authority at the expense of the county to acquire such right of way, either by purchase or by the exercise of the right of eminent domain in condemnation proceedings, as is provided for under the laws of this State."

(Opinion of Attorney General, May 23, 1928, p. 266, Office Edition.)

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Mr. Koonce:LM
June 7, 1928.

Hon. S. H. Blan,
State Auditor,
The Capitol.

Dear Sir:

I have your letter of January 9, 1928, with letter of Mr. R. W. Manning, special agent of the State Tax Commission, enclosed. Mr. Manning states in his letter that in 1904 all of fractional Section 20, Township 3, Range 2 East, lying east of the Indian boundary line in Clarke County, was sold for taxes and was bid in by the Judge of Probate for the State. He further states that the records show that these lands have never been redeemed, but that the Mobile River Saw Mill Company claims them and that the State is barred from enforcing its claim for taxes by the Code of 1923, Section 8945.

Upon this statement of facts you request my opinion:

> Is the State barred from enforcing its claim for taxes against the above property?

In my opinion, the State is not barred from enforcing its claim for taxes under the facts set forth.

Sub-section 2, Section 8945, Code of Alabama, 1923, provides that:

> "All actions by the State or any sub-division thereof for the recovery of amounts claimed for licenses, franchise taxes, or other taxes, shall be brought **within five years.**"

In my opinion, the above quoted provision does not bar the State's claim for said taxes. The State sold the land for taxes **within five** years and the Judge of Probate bid it in for the State. There is no law which requires the State to sell lands, bid in by it for taxes, within a specified time.

Section 3109, Code of Alabama, 1923, provides:

> "Real estate sold for taxes and purchased by the State may be redeemed at any time before the title passes out of the State * * *"

Section 3110, Code of Alabama, 1923, provides:

> "In order to obtain the redemption of land from tax sales, where the same has been sold to the State, the party, desiring to make such redemption shall deposit with the Judge of Probate, etc."

Sections 3109 and 3110, supra, are applicable to the case referred to by Mr. Manning, and if the persons claiming to own said lands desire to redeem same they should be required to comply with the provisions of said sections.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 7, 1928.

State Health Officer,
Capitol,
Montgomery, Alabama.

Dear Sir:

Municipal Corporations; Ordinances; Validity.—Must be clear, certain and definite, and duly promulgated.

Opinion by Assistant Attorney General Smith.

I have your letter of May 23, 1928, in which you enclose a proposed ordinance known as "Short Form of the United States Public Health Service Standard Milk Ordinance."

Upon the submission of this ordinance you request the opinion of the Attorney General as follows:

Does the attached ordinance comply with the Constitution and laws of the State of Alabama.

After a careful reading of the ordinances submitted by you I am of the opinion that should said ordinance be properly promulgated by a municipal corporation of this State, that it would be null and void.

The rule in this State is that a municipal quasi criminal ordinance, as well as ordinances of a different character, must be clear, certain and definite, and duly promulgated. "In determining what are offenses against a municipality, regard can be had to the ordinance of the municipality only."

Kreulhaus v. City of Birmingham, 164 Ala. 623.

In other words a valid ordinance must be a complete law within itself and cannot refer to other laws or regulations not contained in the ordinance itself.

The ordinance under consideration refers to the provisions of the U. S. Health Service Standard Milk Ordinance, as interpreted by the U. S. Public Health Service Standard Milk Control Code, without setting the provisions out.

I have examined the ordinance adopted by the Conference of State and Territorial Health Officers at Washington, D. C., May, 1926, which you also enclosed in your letter. This ordinance when adopted and duly promulgated by principal corporations organized under this State, will, in my opinion be a valid ordinance, enacted under the police power of this State.

I am enclosing herewith copy of ordinance and government document.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 7, 1928.

Clerk of the Circuit Court,
Pell City, St. Clair County, Ala.

Dear Sir:

Trial Tax—Law not repealed by adoption of Code.

Opinion by Assistant Attorney General Haynes.

I have your letter of May 31, 1928, in which you state that some of the attorneys at your bar have called into question Section 4½ of the Act approved September 15, 1919 (General Acts, 1919, p. 284), relating to trial tax of three dollars, for the reason that it was not codified in the Code of 1923.

Upon this statement of facts you request the opinion of the Attorney General as follows:

> Does the failure to include Section 4½, supra, in the Code of 1923 repeal same?

It does not. (Section 3, Act approved August 17, 1923, General Acts, 1923, p. 127, "To adopt a Code of Laws for the State of Alabama.")

Section 4½, p. 284, General Acts, 1919, reads as follows:

> "That a trial tax of three dollars be, and the same hereby is, imposed in each case, civil, criminal and equity, which hereafter goes upon the docket of any circuit court in this State, to be taxed and collected as other costs, and when collected, to be paid by the clerk of such court into the general funds of the State Treasury."

The above section is a provision to **raise revenue** for the State by placing a license tax on each and every case brought in the circuit court, criminal, civil, or in equity, and, therefore, is not affected by failure to include same in the Code which went into effect August 16, 1923, as Section 3, General Acts, 1923, p. 127, makes provision for this, and reads as follows:

> "Section 3. * * * Likewise, no statute applying to the revenue laws of this State, or to taxation, * * * or relating to such subjects, shall be repealed or affected in any manner by the adoption of this Code, or by the failure to incorporate such statutes as a part thereof."

See Opinions of Attorney General, 1924-26, pp. 321, 131.
See Opinions of Attorney General, 1927-28, July 11, 1927, July 22, 1927.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 7, 1928.

Hon. M. C. Davie,
Mayor,
West Blocton, Ala.
Dear Sir:

Taxes—Road and Bridge—Collected in Municipalities. Limitation—Statute of on suits for taxes.

I have your letter of May 26, 1928.

You request my opinion:

1. Is Bibb County due the Town of West Blocton one-half of the road and bridge taxes collected by said county within the corporate limits of said municipality?

2. For how many years back can said town collect said taxes, if due? That is, what is the statute of limitations in this regard?

In answer to your first question, it is my opinion that under Section 2150, Code of Alabama, 1923, the county must pay to the municipality one-half of the **special** road and bridge tax collected within said municipality. Said section is as follows:

"2150. (1335) Taxes; special road or bridge; one-half to municipality.—Courts of county commissioners and boards of revenue of the county where there is levied a **special** road and bridge tax, or either, shall pay over, each year, to each municipality therein, one-half of the money collected on such road and bridge tax, or either, on the property located in such municipality; such sums, when paid over to the municipality, shall be used exclusively for the purpose of maintaining the streets and bridges in the corporate limits of such municipality. Any money derived from a levy of a special bridge tax not expended by the municipality in maintaining the bridges within its corporate limits, in any year, shall be returned to the board of revenue or court of county commissioners, and credited to the county bridge fund for the purpose of maintaining bridges of the county, outside the corporate limits of such municipality."

Funds levied by the county for general purposes but set aside for road purposes cannot be apportioned to municipalities for the improvement of streets. To entitle a municipality to participate in the levy of special road and bridge tax, the levy must be made for road purposes.

County of Montgomery v. City of Montgomery, 190 Ala. 366.

In answer to question two, I advise you that Sub-section 2 of Section 8945, Code of Alabama, 1923, provides that all actions by the State or any subdivision thereof for the recovery of amounts claimed for any taxes must be commenced within five years. With or without suit, the county would not be authorized to pay said back taxes beyond a subsequent five-year period.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 9, 1928.

Chief Examiner of Public Accounts,
Department of Examiners of Accounts,
Capitol.

Dear Sir:

Construction of Statutes. House Bill 562, Local Acts, 1927, page 83, for the relief of Lucien W. Brown, and also Senate Bill 134, Local Acts, 1927, for the relief of J. C. Williams.

Written by Assistant Attorney General Knight.

I have your letter of February 25, 1928, in which you inquire as to the validity of the above mentioned Acts of the Legislature and in which you inquire as to whether such Acts furnish authority for the payment, by the County Treasury, of the sums mentioned therein. These Acts of the Legislature provide for the relief of certain county officers who have been found to owe the county certain monies which came into their hands by virtue of their office. Both officers have paid to the county the monies charged against them and the Acts in question attempting to reimburse them for such payment are attempts to determine that the payments were erroneous.

I am of the opinion that both of the Acts to which you refer, namely, House Bill 562, and Senate Bill 134, Local Acts, 1927, are invalid and that any disbursements made thereunder are illegal and that the Acts are without force or effect.

If the officers, namely, Lucien W. Brown and J. C. Williams, improperly handled funds belonging to Jefferson County, misappropriated the same, or improperly disbursed the same, a liability on their part, and an obligation to pay the same, was established. The Legislature is powerless after such obligation or liability has been incurred to provide that such acts on the part of public officers do not constitute liabilities. In so doing the Legislature would assume the cloak of the judiciary which is expressly prohibited by the Constitution of this State.

Section 43, Constitution, 1901.

When it is ascertained that such obligations or liabilities exist any action of the Legislature attempting to remit or release the same is in direct violation of Section 100 of the Constitution, 1901. This section of the Constitution provides in effect that the Legislature shall have no power to remit or release any liability or obligation owned by the State or any County thereof, and that such liability or obligation shall not be extinguished except by payment thereof by the person so obliged or liable.

The Acts mentioned, since the liabilities have already been incurred, prior to their approval, are further obnoxious as a retroactive attempt by the Legislature to adjudicate as to the liability of the officers vel non. The liability was incurred under pre-existing laws requiring the officers to properly account for the funds coming into their possession, by virtue of their office, which are the property of the county.

In my opinion the Local Acts in question are clearly attempts by the Legislature to remit an obligation owned, and as a matter of fact already col-

lected by the county. The Acts are, further, attempts at legislative adjudication. In my opinion both Acts violate both Section 100 and Section 43 of the Constitution of 1901, if not other sections thereof.

The Acts in question being null and void are without force or effect and furnish absolutely no authority to anyone for payments thereunder.

Norwood v. Goldsmith, 168 Ala. 224.
Mobile County v. Williams, 180 Ala. 639.
New Farley National Bank v. Montgomery County, 84 So. 815.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 9, 1928.

State Tax Commission,
Capitol.

Gentlemen:

Dealers shipping pianos from Georgia into Alabama on approval subject to license tax.

Opinion by Assistant Attorney General Brassell.

I have your letter of February 17, 1928, in which you state that A, who resides at Lanett, Alabama, was in the market for a piano and informed B of such facts. B suggested to C, who was engaged in the piano business in Atlanta, Georgia, that a piano be sent to A upon approval. C delivered to A at Lanett, Alabama, a piano for trial and approval. Subsequently, A notified C that the piano would be acceptable. The contract of sale was drawn and executed in Alabama. The delivery was made before the sales contract was executed.

You invite my attention to Schedule 89, of an Act approved September 15, 1919 (General Acts, 1919, p. 426).

You request my opinion:

First. Was such a transaction under the interstate commerce clause of the Federal Constitution, or would it constitute doing business in Alabama by C, and subject C to the license laws of this State?

Second. Would this one transaction be sufficient to establish liability for license?

In answer to your first question, I am of the opinion that the statement of facts submitted by you, would constitute doing business in Alabama.

Schedule 85 of the Act approved September 15, 1919 (General Acts, 1919, p. 426), is as follows:

"Schedule 85. PIANO AND ORGAN DEALERS.—For each person engaged in the business of selling, renting or delivering pianos, organs, talking machines, small musical instruments, or all of such articles in this State, either in person or by agent, consignee or broker, one hun-

dred dollars as a license to the State for each county in which he may do business, or in which he sells or attempts to sell such articles, and one-half of such amount as a license to each county; * * *"

"Where a foreign corporation sells its products to a wholesale merchant in this State, and then sends into this State, its agents to assist such wholesale merchant in selling such products to retail merchants of the State, the work of such agents for such corporation constitutes doing business in this State."

Opinions of Attorney General, Series II, p. 16.

"Where a foreign corporation furnishes wagons to an agent on board cars in Ohio, for sale in Kentucky under an 'agent's commission contract,' retaining title in the corporation, and requiring the proceeds to be kept separate as its funds, the corporation 'does business' in Kentucky."

Milburn Wagon Co. v. Commonwealth, 104 S. W. 323, 324, 139 Ky. 330.

Vol. 2, Words and Phrases, 114.

The piano was delivered to Lanett, Alabama, on trial and approval. Thereafter the sale was consummated in Alabama. This constitutes doing business in Alabama.

In answer to your second question, I am of the opinion that this transaction is sufficient to constitute liability for license under the hereinbefore quoted schedule.

Smith & Fay v. Montgomery Ward & Co., 96 So. 231.
Cardon v. Hampton, 109 So. 176.

It is apparent the contract of sale was made and consummated in Alabama, and C is presumed to know the law. Therefore, the one transaction is sufficient to constitute doing business in this State in violation of the hereinbefore quoted schedule.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Written by Judge Smith:K
June 9, 1928.

Hon. W. L. Pratt,
Judge of Probate,
Centreville, Alabama.

Dear Sir:

I have your letter of March 1, 1928, in which you state the following:

1. A business is conducted by a concern for which it has taken out a license. It makes no change in location or the general conduct of its business but takes in an additional partner, without procuring a new license thereafter.

2. A party has taken out a license for several slot machines and placed them in the business houses of other parties in whose business he has no interest, which other parties have procured no additional licenses for their operation.

Upon the foregoing statement of facts you request my opinion:

1st. Where a license is taken out to conduct a business and no change is made in location of or the general conduct of said business but simply a change is made by taking in an additional partner should there be a new license taken out?

2nd. Are parties who own and operate a regular business required to take out a license on a slot machine where the machine is owned and operated by other parties and simply set up in said place of business for convenience, the license having already been paid by the owner of said machine?

In answer to your first question I am of the opinion that where a business, being conducted, has taken out a license and no change in the character of business or the location has taken place except the adding of another partner thereto, it will not be required to take out a new license. The license so taken out is for the conduct of the **particular business** and the change of personnel by adding a new partner would not invalidate the license to conduct said business.

In answer to your second question I am herewith enclosing you a copy of an opinion rendered May 23, 1928, addressed to Hon. Calvin Poole, Circuit Solicitor, Greenville, Alabama.

I am of the opinion that where a slot machine, **not prohibited by law** (except drinking cup, postage stamp, electricity and gas vending machines specified in law) are set up for operation in a place of business Schedule 73, Section 361, Act approved September 15, 1919 (General Acts, 1919, p. 423) applies, and the license therein required on **lawful slot** machines must be paid by the person, owner or proprietor of the establishment **in or at which** such **slot machine is located,** and not by any outsider.

Said schedule is as follows:

"Schedule 73. Nickle-in-Slot Machines.—For each machine, such as nickle-in-the-slot, or other device of like character, whether the same is charged for or not, ten dollars; for each penny-in-the-slot machine, five dollars. This shall apply to music boxes, phonographs, etc., having the nickle-in-the-slot device, but shall not apply to any device prohibited by law, or to any machine from which individual drinking cups, postage stamps, electricity or gas is received for the amount placed in said machine. Where several such slot machines are run or operated as a 'penny arcade,' or like place of amusement, the total licenses on all machines so run or operated in any one 'penny arcade' or like place of amusement shall be one hundred dollars per annum in towns or cities of more than twenty thousand inhabitants, for the State, and fifty dollars for the county, and in all other places, fifty dollars per annum to the State and one-half of this amount to the county. This license shall be due and pay-

able by the person, owner or proprietor of the establishment, store or place of business in or at which such slot machine is located, and the State shall have a lien for the payment of such license upon such machine, which lien may be enforced by attachment."

See also Sections 364, 366, 367, 368, 369, 402, same Act.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 9, 1928.

Clerk, Circuit Court,
Evergreen, Conecuh County, Alabama.

Dear Sir:

Fines assessed and collected for using old tags paid into the fine and forfeiture fund.

Opinion by Assistant Attorney General Brassell.

I have your letter of May 17, 1928, in which you state that three cases have been disposed of in your court for the violation of the revenue law; i. e., driving a motor vehicle on the public highway with an old tag.

You request my opinion:

"Should the fines assessed and collected for the offense of using an old tag be paid by the clerk into the State Treasury, under the Act approved August 23, 1927. (General Acts, 1927, p. 348)?"

In answer to your question, I am of the opinion that, the fines assessed and collected by you for the offense of operating a motor vehicle on the public highways with a tag of a previous year's issue, are not paid into the State Treasury pursuant to the Act approved August 23, 1927 (General Acts, 1927, p. 348, Section 106).

The operation of a motor vehicle with a tag of a previous year's issue is a misdemeanor under Section 72 of an Act approved July 22, 1927 (General Acts, 1927, p. 183, Section 72). And the fines collected for such "criminal proceedings" as are therein mentioned, should be paid into the fine and forfeiture fund of the county.

The Act approved August 23, 1927 (General Acts, 1927, Section 106), simply provides for the payment of fines and forfeitures collected under Article 2 of said Act for the violations of the enumerated offenses therein. The operation of a motor vehicle with a tag of a previous year's issue on the highways of this State is not one of the offenses named in Article II of the Act, supra. Hence, the fines mentioned by you should be paid into the fine and forfeiture fund of the county.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 9, 1928.

State Auditor,
State Capitol,
Montgomery, Alabama.

Dear Sir:

Foreign Corporation Permit Fee; money belonging to corporation on deposit in banks of this State to be included in amount of capital employed in this State in arriving at amount to be paid as permit fee.

Written by Assistant Attorney General Smith.

Your letter of May 7, 1928, in which you state a foreign corporation desiring to qualify to do business in this State holds money in an Alabama bank on deposit.

Upon this statement of facts you request the opinion of the Attorney General as follows:

"In arriving at the amount to be paid for corporation permit should money held in banks in the State of Alabama by said corporation be taken into consideration in arriving at the amount of capital employed?"

The foreign corporation permit fee is provided for under Section 42 of the Act approved July 22, 1927. (General Acts, 1927, page 171.) The amount of the permit fee is based on the amount of the capital employed in the State. This being the case it is necessary to consider what is meant by **capital employed** in this State.

It has been uniformly held by this office, the Supreme Court of Alabama not having passed upon the matter, that the meaning of the words "amount of capital employed in this State" is its natural and most obvious meaning. The word **capital** as here used is without limitation except that it shall be actually employed in the State, it is not limited to capital stock or the common venture, it means everything of value employed in this State, regardless of its source or ultimate destiny.

Attorney General Report, 1922-24, page 161.

Having thus defined the words "capital employed in this State," I am of the opinion that should said foreign corporation apply for a corporation permit as provided in Section 42 of the aforementioned Act, you as Auditor should include money belonging to said corporation on deposit in banks in this State in arriving at what amount of capital is employed in this State.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 9, 1928.

Judge of Probate,
Russell County,
Seale, Alabama.

Dear Sir:

Section 9604, Code of Alabama, 1923, as revised by Code Committee and amended by General Acts, 1927, p. 693, includes stamps for the official business of the Probate Judge.

Opinion by Assistant Attorney General Haynes.

I have your letter of May 30, 1928, in which you state that you are Probate Judge of Russell County and use quite a number of postage stamps in connection with your correspondence on official business. Upon this statement of facts you request the opinion of the Attorney General as follows:

"Under the law is the county liable to me for the amount expended for postage stamps?"

In answer to your inquiry, the county is liable for the amount expended by you for postage stamps. Section 9604, Code of Alabama, 1923, as amended by the Act approved September 6, 1927 (General Acts, 1927, p. 693), provides as follows:

"9604. STATIONERY OF OFFICERS PAID FOR BY COUNTY.—The Judge of Probate, Tax Assessor, Tax Collector, Register of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or Custodian must be allowed reasonable expenses, for suitable books, stationery, postage stamps used exclusively for official business, and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expense for his seal of office, to be paid for by the county."

See Opinion of Attorney General to Tax Collector of DeKalb County, May 21, 1928.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 9, 1928.

Hon. E. T. Terry, Chairman,
Court of County Commissioners,
Huntsville, Alabama.
Dear Sir:

Commissioners Court—No authority to appropriate funds to State organization for crippled children.
Opinion by Assistant Attorney General Evans.

I have your letter of May 17th. You wish my opinion as to whether or not your Court of County Commissioners have authority to appropriate money to the State organization for crippled children.

You cite no law which could have suggested to you the question. On examination of the Code, 1923, and of the Acts, 1923, and of the Acts, 1927, I find no authority given for such appropriations, and no authority given the Court of County Commissioners that would include such authority. If you have such authority, it must be by some local law applicable to your county, which has not come to our attention.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Opinion by Assistant Attorney General Brassell.
June 11, 1928.

Hon. Wm. W. Brandon,
Judge of Probate,
Tuscaloosa, Alabama.
Dear Sir:

I have your letter of May 24, 1928, in which you state a person in your County purchased a Victory Dodge automobile, which should carry a B tag. That the license inspector has cited the person to appear and take out the proper license tag, and is claiming the penalty.

You request my opinion:

1. Where a person has purchased an A tag, can it be used on a Victory Dodge automobile, which requires a different tag?
2. Can the license inspector exact the penalty from such person?

In answer to your first question, I am of the opinion that the person purchasing and driving a Victory Dodge automobile will have to purchase a B tag.

Under Section 12, of an Act approved September 13, 1923 (General Acts, 1923, page 284), the license tax to be charged for the operation of an automobile is based upon horse power. It is a matter of common knowledge that a Victory Dodge automobile is of 27.3 ratable horse power and must carry a B tag.

In answer to your second question, I am of the opinion that the license inspector is entitled to the penalty when he cites a person to appear.

Under Section 72, of an Act approved July 22, 1927 (Acts of 1927, page 139), when it comes to the knowledge of a license inspector that a person has failed to take out a license, he must cite such person to appear and take out the proper license. This Section applies to automobile tags. Under Section 72 of the Act, supra, the fees and penalties provided therein are as follows:

"* * * The license inspectors are entitled to be paid by the delinquents in addition to the license 15% of the amount of license so collected from each delinquent, which must be paid in all cases where a report has been made to the Probate Judge of such delinquents. * * *"

As was said by the Attorney General in Series IV, page 381:

"I know of no excuse that will relieve such a delinquent from taking out a proper license, and paying the penalty provided by law, as he is conclusively presumed to know the law. Doubtless there are cases which should appeal to the generosity of the license inspector; but such cases are for him to decide."

See opinions of Attorney General, Series III, page 128.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1928.

The State Auditor,
Capitol.
Dear Sir:

The payment of feed bills to sheriffs for children under sixteen years of age not a legal charge.

Opinion by Assistant Attorney General Brassell.

I have your letter of May 18, 1928, in which you desire to be advised concerning the payment of feed bills to sheriffs for persons under sixteen years of age incarcerated on a felony charge. You request my opinion:

"In case a person is arrested charged with a felony, and is incarcerated in jail for some months prior to trial, his name appearing regularly on the feed bill, and it afterward develops or is proved in court, at the time of the trial that such person is under the age of sixteen years, and an order is made transferring the case to the Juvenile Court, would the payment of such feed bill prior to that time be legal inasmuch as nothing on the feed bill conveyed the idea that said person was a juvenile?"

In answer to your question, I am of the opinion that a person under sixteen years of age committed to jail on a felony charge is a ward of the court and is not a prisoner, and that the law as to feeding prisoners has no

application to a person under sixteen years of age, notwithstanding the fact that the feed bill discloses that such person is confined on a felony charge.

Opinion of Attorney General to State Prison Inspector, May 18, 1928.

Bell v. State, 110 So. 68.
Hart vs. State, 113 So. 471.
Section 3539, Code of Alabama, 1923.

Whenever a child under sixteen years of age is brought before a magistrate or any court in the county other than a Juvenile Court, charged with **any** offense, such magistrate shall, or such court shall forthwith by proper order, transfer the case to the Juvenile Court of the County. This appears to be a mandatory provision of Article 1, Chapter 100, Code of Alabama, 1923.

Hart v. State, supra.

In the case of Macon v. Holloway, Judge, 96 So. 933, the Court had this to say:

> "In the absence of a juvenile court law, the petitioner will be subject to indictment and prosecution, in the court of competent jurisdicition for any violation of the law * * *. In the absence of a provision of this character ,the child charged with the commission of a felony will be triable in the circuit court of the county in which the offense was committed. The effect of the provision above referred to is to temporarily suspend the right of the State to proceed against a child in the circuit court for the violation of the criminal statutes of the State, and to authorize the juvenile court to adjudge the child to be a delinquent and a ward of the State, and to be cared for accordingly * * *."

Notwithstanding the fact that a person under sixteen years of age, has been incarcerated on a felony charge for some months prior to his trial, the age of such person must be ascertained by the court and is an issue of fact to be determined by the judge, if tried for an offense in which a jury trial is not demanded, and if under an indictment, it is encumbent on the jury under the directions of the court to ascertain the age of such person, and if found to be under sixteen years of age, the court must transfer the case to the juvenile court of the county, and thereupon such child becomes a ward of the court.

The payment of the feed bill for a person under sixteen years of age by the State would not be a legal charge, notwithstanding the fact that the feed bill fails to disclose the age of such person.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1928.

The Judge of Probate,
Elba, Coffee County, Alabama.
Dear Sir:

Tax on lubricating oil.
Opinion by Assistant Attorney General Rayburn.

I have your letter of January 7, 1928.

You request my opinion as to whether or not the Standard Oil Company can legally charge Coffee County two cents per gallon on lubricating oils sold to said County, said charge being itemized as a two cent State tax.

It is my opinion that there is no law which prohibits the distributor or retail dealer of lubricating oils in this State from raising the price of said oils two cents per gallon in order to cover the excise tax imposed by the State on such commodities. As a rule, the ultimate consumer pays such a tax, either consciously or unconsciously. The distributor pays the tax into the State Treasury, not the consumer. Coffee County would be paying the purchase price on said oils. Said county does not pay the State of Alabama an excise tax. Sections 26 to 41 inclusive, of the Act approved July 22, 1927 (General Acts, 1927, pp. 168-171), provide for the payment of the tax here considered on lubricating oils by the sellers thereof.

To like effect, see opinions of the Attorney General as follows:

Jan. 30, 1928, to Hon. J. H. Webb, County Attorney, Mobile, Alabama.

Feb. 14, 1927, to Mr. W. B. Davidson, Mobile, Alabama.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1928.

Mr. D. H. Turner,
Court Reporter, Fourth Judicial Circuit,
Camden, Alabama.
Dear Sir:

Court Reporter cannot assert claim against Fine and Forfeiture fund for transcript fee.

Opinion by Assistant Attorney General Koonce.

I have your letter of April 28, 1928. You refer to Section 4039, Code of Alabama, 1923, as amended by the Act approved Feb. 18, 1927 (General Acts, 1927, page 45), relating to the payment of fees in criminal cases.

You request my opinion:

Can an official court reporter assert a legal claim against the fine

and forfeiture fund for transcript of testimony furnished as basis of appeal, where the defendant is convicted and appeals to a higher court when defendant is unable to pay for same and an execution against him is returned "no property found?"

In my opinion an official court reporter cannot be paid from the fine and forfeiture fund for making transcript of testimony under circumstances such as you relate, because Section 6735, Code of Alabama, 1923, expressly provides that the court reporter shall not be required to furnish such transcript until the fee for making same has been paid or the security thereof has been assured.

Section 6735 is as follows:

"6735. TRANSCRIPT FURNISHED TO PARTIES; FEES FOR—The court reporter shall furnish, within thirty days, or such other time as the judge may prescribe, to any party to a cause reported by him, upon demand being made for the same, or upon order of the presiding judge, a typewritten transcript of his stenographic notes or any part thereof, except proceedings before the grand jury, upon payment of a transcript fee of ten cents for each one hundred words thereof, and for each carbon copy made at the same writing, five cents for each hundred words thereof; **but such court reporter shall not be required to perform any part of such service until the payment or security thereof is assured.**"

It has long since been the law of this State that statutes relating to costs and fees are penal and must be strictly construed, and officers and persons claiming costs or fees must be able to furnish express authority for the payment of such costs and fees.

State v. Willis Brewer, 59 Ala. 130.
Torbert v. Hale County, 131 Ala. 145.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1928.

Hon. John S. Turner,
Commissioner of Maintenance,
Capitol.
Dear Sir:

Fines which may be imposed in cases of reckless driving of automobiles.

Opinion by Assistant Attorney General Haynes.

I have your letter of May 28, 1928, in which you state in cases of convictions for reckless driving of automobiles the Judge of the Jefferson County Court of Misdemeanors is placing these fines at one dollar to five dollars.

You request my opinion:

Can said judge impose such fines for this offense?
In my opinion the Judge named cannot legally do so.

Section 49 of the Act approved August 23, 1927 (General Acts, 1927, page 365) ("The Alabama Highway Code"), defining the offense of reckless driving and regulating the penalty, is as follows:

"Section 49. RECKLESS DRIVING. Any person who drives any vehicle upon a highway carelesssly and heedlessly in wilful or wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property, shall be guilty of reckless driving and upon conviction shall be punished by imprisonment in the county or municipal jail for a period of not less than five days nor more than ninety days or by a fine of not less than twenty-five dollars nor more than five hundred dollars or by both such fine and imprisonment, and on second or subsequent conviction shall be punished by imprisonment for not less than ten days nor more than six months or by a fine of not less than fifty dollars nor more than one thousand dollars, or by both such fine and imprisonment, and the court shall prohibit the person so convicted from driving a motor vehicle on the public highways of this State for a period of not exceeding six months."

The above Section repeals Section 3328, Code of Alabama, 1923, and constitutes the only State law on the subject. Under this Section for the **first** offense the penalty is imprisonment in a municipal or county jail for not less than five nor more than ninety days **or** a fine of **not less than twenty-five dollars** nor more than five hundred dollars **or both,** and on the **second** or **subsequent** conviction the penalty is imprisonment for not less than ten days nor more than six months or a fine of **not less than fifty dollars** nor more than one thousand dollars, or both.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1928.

Mr. J. H. Webb,
License Inspector,
Grove Hill, Clarke County, Alabama.

Dear Sir:

No Inspector's fee for citing person for failure to properly display license tag on automobile.

Opinion by Assistant Attorney General Rayburn.

I have your letter of May 29, 1928, in which you desire to be advised of the amount of fee which you are entitled to for citing a person who fails to display an automobile license tag as provided in Section 20 of an Act approved September 13, 1923. (General Acts, 1923, page 290.)

It is my opinion that you are not entitled to a fee for such a citation. There is no authority of law providing a fee in this regard. Section 25-b of an Act approved September 13, 1923 (General Acts, 1923, pp. 294, 295), fixes certain fees and commissions to be allowed license inspectors for performing certain definite and specific duties. Citing persons who fail to properly display a license tag is not one of the duties named in said Section. This is a matter which addresses itself to solicitors, grand juries and sheriffs, and not primarily to license inspectors.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 11, 1928.

Mr. M. H. Barnes,
License Inspector,
Guntersville, Marshall County, Alabama.

Dear Sir:

License Inspector may arrest without warrants persons operating motor vehicles on the public highways without license tags.

Opinion by Assistant Attorney General Brassell.

I have your letter of May 31, 1928, in which you desire to be advised concerning the authority of the license inspector to make arrest. You request my opinion:

Can a license inspector arrest a person operating a motor vehicle on the public highways of this State without a license tag when no warrant of arrest has been issued for such person?

I assume that you refer to instances in which such vehicles are operated on public highways, and on this assumption this opinion is based.

In answer to your question, I am of the opinion that a license inspector

has authority to arrest a person operating a motor vehicle on a public highway **within his territory** without a license tag.

Sub-section (b) of Section 25 of an Act approved September 13, 1923 (General Acts, 1923, page 294), is as follows:

> "* * * If such delinquent shall fail or refuse to take out license, the license inspector shall institute or cause to be instituted criminal proceedings against such delinquent before any court having jurisdiction of such offenses. In case of emergency, the license inspector must commence criminal proceedings in the first place * * *."

The delinquent referred to in the hereinbefore quoted section would include persons operating motor vehicles on the highways of this State without a tag. The criminal proceedings therein mentioned would include the operation of a motor vehicle without a license tag, and is a misdemeanor.

By Section 72 of an Act approved July 22, 1927 (General Acts, 1927, page 185), license inspectors have the same power to **arrest** persons violating the revenue laws of the State as is **now vested in the sheriffs** of the State and shall receive the same fees for such services.

The operation of a motor vehicle on a public highway of this State without a license tag is a misdemeanor (General Acts, 1923, page 294), and if, the license inspector should see a person so operating a motor vehicle on a public highway without a license tag it would be his duty to arrest such person, notwithstanding the fact that no warrant of arrest had been issued for such person.

> Sections 3261 and 3263, Code of Alabama, 1923.
> Haynes v. Mitchell, 69 Ala. 452.

The license inspectors of this State have the same authority to arrest persons for violating the revenue laws as sheriffs. In making the arrest without a warrant the offense must be committed in the presence of the license inspector before he has authority to make arrests without a warrant.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 12, 1928.

Judge of Probate,
Mobile, Mobile County, Alabama.
Dear Sir:

> Transfer of Truck Licenses.
> Opinion of Assistant Attorney General Rayburn.

I have your letter of November 21, 1927.

You request my opinion as to whether or not truck licenses, under a construction and interpretation of Section 17 of an Act approved July 22,

1927, may legally be transferred from one person to another person, and from one truck to another truck.

It is my opinion that a truck license may legally be so transferred. The pertinent part of Section 17 reads as follows:

"* * * * Any owner of a motor truck who has already obtained a license or license tag as provided by law and who exchanges for another may obtain a transferred license tag or certificate in the same manner and upon the same terms and conditions upon payment of the same fee as do owners of automobiles when obtaining a transferred license or tag."

Section 12 (General Acts, 1923, page 286), referred to in the **foregoing** Acts, reads as follows:

"* * * persons paying an automobile license may have the same **transferred** to **any other person, or to any other car,** provided, etc."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 13, 1928.

Judge of Probate,
Birmingham, Jefferson County, Alabama.
Dear Sir:

License—Pawnbroker.
Opinion by Assistant Attorney General Rayburn.

I have your letter of June 7, 1928.
You request my opinion:

Is a pawnbroker required to take out an additional license for the sale of musical instruments, dice, knives, shot guns, metallic ammunition, etc.?

It is my opinion that a pawnbroker is required to take out additional licenses for the sale of the different commodities and articles enumerated by you, under the appropriate schedule or schedules.

A pawnbroker is, according to Webster's International Dictionary, "one who makes a business of lending money on the security of personal property pledged or deposited in his keeping."

Schedule 78 of an Act approved September 15, 1919 (General Acts, 1919, page 425), provides that the license of engaging in the business of a pawnbroker shall be two hundred and fifty dollars, and then states: "but this shall not be construed to allow the sale of pistols unless an additional license is paid as required by this Act."

In said Act, other schedules are found, which require a license for the sale of each of the articles named by you. In order to make the meaning

of Schedule 78, supra, clear and unambiguous, the clause with reference to the sale of pistols was added.

Manifestly, it would be unjust to dealers in the articles named by you to require them to take out a license before selling such articles, and at the same time, for a license fee of $250.00, to permit pawnbrokers to sell any article of personal property which they may have as unredeemed pledges without procuring the appropriate license therefor. Such is neither the letter nor the spirit of the Act here considered.

A license to carry on or engage in a particular business does not entitle the holders thereof to carry on any other business than that named therein.

Opinions of the Attorney General, 1925, Volume 1, page 25, Office Edition.

Opinions of Attorney General, 1921, page 89, Office Edition.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 14, 1928.

County Superintendent of Education,
Ozark, Dale County, Alabama.

Dear Sir:

District Tax—Use of.
Opinion of the Attorney General.

I have your letter of May 14, 1928, in which you acknowledge receipt of my letter of May 3, 1928.

You request my opinion:

1st. Can a County Board of Education use any district three mill tax in purchasing equipment for school buildings not owned by the State?

2nd. Can a County Board of Education use any part of a district three mill tax in erecting or repairing school buildings which are not owned by the State?

You also state in your letter that the State Superintendent of Education advised you as follows:

"I. The County Board of Education may legally expend a part of the three mill district tax in purchasing equipment for school buildings, the titles of which are not in the State or the county board of education. It must be understood, of course, that such equipment is the property of the county board of education and may be placed at its discretion in some other school of the district.

"2. The county board of education cannot legally expend any part of the district three mill tax for the erection or repair of school buildings,

the titles of which are not in the State or the county Board of Education. It might be permissible to use a part of the district tax for minor repairs to buildings which are not owned by the State nor by the county board of education, but it would be illegal for the county to make **major** repairs to such property inasmuch as this would involve the investment of public moneys in privately owned property."

In answer to your first question, I am of the opinion that a County Board of Education may use a portion of the special three mill district school tax of any district under its control in providing equipment to be temporarily located in school buildings under its control, even though such buildings are not owned by the State nor County, provided, however, that this cannot apply to those instances where the district tax has been voted for another and definitely specified purpose.

In answer to your second question, I am of the opinion that a County Board of Education cannot legally use any part of any special three mill district tax of any school district under its control either in erecting or repairing school buildings not owned by the State or the County Board of Education.

Referring to the above quoted letter of the State Superintendent of Education, will state that the first paragraph of his letter is a correct interpretation of the law insofar as it goes, in the light of the restriction set forth in my answer to your first question. The second paragraph of his letter, wherein he states that it might be permissible to use a part of a district tax for minor repairs to buildings which are not owned by the State or by the County Board of Education, is an incorrect interpretation of the law. The correct interpretation is that set forth in my answer to your second question. Under no circumstances, at any time, can a County Board of Education use the special three mill district tax of any school district under its control in making even minor repairs to buildings not owned by the State, or the County Board of Education.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

Copy to :
The State Tax Commission,
Capitol.

June 15, 1928.

The Tax Collector,
Fort Payne, DeKalb County, Alabama.

Dear Sir:

Postage stamps—allowance by commissioners court to tax collectors in registering notices to delinquent tax payers.

Opinion by Assistant Attorney General Smith.

I have your letter of May 16th.

You state that you have submitted to the Court of County Commissioners of DeKalb County, for the approval of said court, a bill for postage

stamps, said stamps having been used by you as Tax Collector in giving written notice to delinquent tax payers.

You also state that said bill was rejected by said Court, for the reason that said Court did not consider the stamps so used by you to have been used in transacting official business incident to your office.

You request my opinion as to whether or not the county should reimburse you for money expended by you in purchasing postage stamps which were used by you, as Tax Collector, in giving written notice to delinquent tax payers.

In this connection I call your attention to Sections 198, 200 and 264 of the Act approved September 15, 1919 (Acts 1919, p. 342, 343, 359), which are as follows:

> "Section 198. For making actual demand on **delinquent tax payers,** the collector shall be entitled to receive a fee of fifty cents **from each tax payer** on whom such demand is made, which shall be charged against such tax payer and collected for the use of the collector in the same manner and by the same means as taxes are collected, * * *"
>
> (See Sec. 3052, Code of Alabama, 1923.)
>
> "Section 200. After the first day of January the collector must make a **personal demand in writing upon delinquent tax payers,** or their agents, charged with the duty of paying their taxes and fees, and **when unable** to find them **he shall leave** such demand at their places of business or residence; **or make demand by registered letter directed** to his last known place of business or residence, return card demanded. * * *"
>
> "Section 264. For each notice to a delinquent land owner to show cause why a decree of sale should not be rendered, the Judge of Probate is entitled to a fee of fifty cents and for each decree of sale, fifty cents; the tax collector shall have twenty five cents for serving each notice **which may be given by registered mail** with **return receipt demanded,** * * *"

You will observe that Section 200 makes it the duty of the Tax Collector to make personal **demand** in writing upon delinquent tax payers; or make demand by registered mail. For such service a fee is provided. (Section 198, supra.)

Section 264 provides that for serving each notice on a **delinquent land owner** to show cause why a **decree of sale** should not be rendered, the **Tax Collector** shall **have twenty-five cents** and the service may be accomplished by registered mail.

I notice that these fees are taxed against and collected from the delinquents named, and are not paid by the county.

You will note also that the Act containing the quoted sections makes no mention of who shall pay the postage.

The Legislature of 1927, amended Section 9604, Code of Alabama, 1923, by an Act approved September 6, 1927, so as to be as follows:

> "9604. STATIONERY OF OFFICERS PAID FOR BY COUNTY.—The Judge of Probate, Tax Assessor, **Tax Collector,** Regis-

ter of the Circuit Court in Equity, Clerk of the Circuit Court, Sheriff and the County Treasurer or Custodian must be allowed reasonable expenses, for suitable books, stationery, **postage stamps used exclusively for official business,** and telephones to be paid for by the county, on the approval of the Court of County Commissioners, Board of Revenue or other like governing body, and the Judge of Probate shall also be allowed expense for his seal of office, **to be paid for by the county.**

(General Acts, 1927, p. 693.)

This Act as amended simply includes Tax Collectors among other officers who must be allowed reasonable expenses, for certain items amongst which are **"postage stamps used exclusively for official** business."

Under said Section 9604, as thus amended in my opinion, postage stamps must be furnished for all official business independent of the above cited fees. The sending of notices to delinquent **tax payers** is clearly official business and the Tax Collector should be allowed reasonable expenses for postage stamps so used. The fee of twenty-five cents provided in Section 264, supra, is paid by the **tax payer** to the Tax Collector, and the stamps should be paid for by the county. The fee is for the **services** of the Collector. The stamps are no part of his compensation.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 15, 1928.

Hon. Bibb Graves,
The Governor of Alabama,
Capitol.

Sir:

State Lands—Construing Section 6851 of Code, 1923, with respect to deeding certain lands to the City of Mobile.

Opinion by Assistant Attorney General Evans.

The legislative intent in Section 6851 of the Code, 1923, was not to invest the Governor with authority to sell, give away or otherwise dispose of lands belonging to the State. It was the legislative intent to invest the Governor with authority to convey lands, the legal title of which is in the State, to persons having a perfect equity, by purchase, or valid claim thereto for some other reason. Prior to the passage of the Act, which is codified as Sections 6851 and 6852, Code, 1923, authority had at times been given to certain officials or departments of government to sell lands of the State without providing the specific method of conveying to the purchaser the legal title to such lands; also certain governmental instrumentalities of the State had and controlled lands, subject to the statute of limitations. Many people acquired title to such lands by adverse possession, but could not, in many instances borrow money on such lands or sell same for their value without written title from the State. To get all such matters straightened out said Act was passed.

The meaning of said Act is that the Governor may, in such cases, request the written opinion of the Attorney General as to whether or not such a purchaser or claimant is entitled to a conveyance, where no other method is provided by law, and if the Attorney General considers that such purchaser has a perfect equity to the land, or has acquired title by adverse possession, and the Governor is also satisfied that such is the case, then he is authorized to make such conveyance.

The opinion of the Attorney General is not directed to a question of public policy, in giving his opinion, but to the question of law as to whether or not, under the facts of the particular case, the petitioner is entitled to the deed. After advice from the Attorney General that a deed is proper, the Governor may make such deed or not as to him seems proper. In such cases both facts and law may have to be considered. Does the petitioner state the truth? If so, what is the law under the facts stated? It may be necessary for the Attorney General to determine both the facts and law. It is also necessary that the Governor be satisfied as to both fact and law before it becomes incumbent upon him to execute a conveyance. It would have been too easy for the Legislature to have, by direct statement, invested the Governor with power to sell or give away the property of the State, as well as make conveyance where "conveyance is proper," to have left such an importanct power to inference where such inference is not necessary to a full construction of the statute. Are the parties petitioning entitled to a deed? If so, such a conveyance is proper, and, if not, such a conveyance is not proper.

The statute says "The Governor of Alabama may request the written opinion of the Attorney General of Alabama as to whether such a conveyance is proper." This does not mean for the Governor to get the opinion of the Attorney General as to whether it would be to the interest of the State for the Governor to make the conveyance as a matter of public policy; but whether the petitioner is entitled to a conveyance under the facts stated.

The papers are returned herewith.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 15, 1928.

The Judge of Probate,
Guntersville, Marshall County, Alabama.
Dear Sir:

License Tax—Variety Shows.
Opinion by Assistant Attorney General Rayburn.

I have your letter of June 8, 1928. In it you state that the Griffith Show is a tent show playing weekly engagements of a variety nature, i. e., moving pictures, magic, juggling, singing, dancing, musical comedy, etc., and that the owners of said show class it as a "Variety Show," and have been paying a license of twenty-three dollars ($23.00) per week for the privilege of showing. You further state that the owners of said show claim that Section 16 of an

Act approved July 22, 1927 (General Acts, 1927, p. 156), does not repeal Schedule 106 of Section 361, of an Act approved September 15, 1919 (General Acts, 1919, p. 433), relating to variety shows.

You request my opinion:

1. What license tax is chargeable for said show?
2. Does Section 16 of the Act approved July 22, 1927, supra, repeal Schedule 106 of the Act approved September 15, 1919, supra, insofar as same relates to variety shows?

In answer to your first question I am of the opinion that the Griffith Show is what is generally termed a variety show, and, it being of a transient nature, operating temporarily in different places, in tents or otherwise, it falls within the provisions of Section 16 of the Act approved July 22, 1927, supra, which requires the payment of a license to the State of a certain amount per week based on the seating capacity of said show. It must be understood, however, that this license required under said Section 16, does not exempt them from the payment of a license for such individual acts or exhibitions of said show, as are specifically covered by other revenue laws, such as, for instance, Schedule 64 of Section 361, Act approved September 15, 1919, relating to legerdemain. This is for the reason that such an Act is not **necessarily** a part of a variety show.

While Section 16 of the Act approved July 22, 1927, does not mention "variety shows" as such, nevertheless, it does mention transient vaudeville and theatrical shows, and, in my judgment, the purpose and intent of said Section 16 was to cover a transient **variety show** which is practically the same thing as a transient vaudeville show.

In answer to your second question, I am of the opinion that Section 16 of the Act approved July 22, 1927, repeals Schedule 106 of Section 361 of the Act approved September 15, 1919, insofar as it relates to vaudeville, theatrical and variety shows of a transient nature operating temporarily in different places in tents and otherwise, and that said Schedule 106 of Section 361 of said Act is repealed only to the extent of the matters covered in Section 16 of the Act approved July 22, 1927. As to any **other** transient shows, exhibitions, entertainments, etc., said Schedule 106 is not repealed.

In the instant case, a license is due from the Griffith Show, under Section 16 of the Act approved July 22, 1927, and in **addition**, there is due by the owner or proprietor additional licenses for such individual acts of said show as are covered by other revenue laws.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 16, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
The Capitol.

Dear Sir:

Officers—County Board of Education—Contract with County Superintendent allowing lump sum for traveling expenses.

(2) County Board of Education—Allowance of expenses to county superintendent to attend meeting of National Education Association.

Opinion by the Attorney General.

I have your letter dated May 17, 1928, attached to which is a letter from the Superintendent of Education of Pickens County, Alabama, and a copy of the contract of employment entered into between said superintendent and the County Board of Education of said county under date of May 27, 1927. By the terms of said contract the superintendent is employed for a term of four years, beginning **July 1, 1927,** at a salary of $2,600.00 per annum, payable monthly, with an allowance of $500.00 per year for traveling expenses, and with provision therein that the County Board of Education may make additional appropriations as traveling expenses to educational meetings.

You request my opinion:

1. Has said County Board of Education the right to appropriate money to pay the expenses of a trip by the county superintendent of education to the National Education Association?

2. If such appropriation and payment is legal, then from what fund is the payment to be made?

In answer to your first question, I am of the opinion that it is not within the authority or province of such a board nor the contemplation of the law that the County Board of Education appropriate a **lump** sum of money from the school funds of the county as expenses of the county superintendent of education to make a trip to a meeting of the National Education Association, or any other educational meeting, but, that, under the terms of this contract, it is within the legal authority of said board of education to allow the county superintendent of education reimbursement for his **actual** traveling expenses incurred in attending a meeting of the National Education Association, or any other public educational meeting, where he has been, in advance of attending such meeting, directed by the County Board of Education to attend such meeting or meetings, which direction or authorization must affirmatively and specifically appear in the minutes of the County Board of Education in advance of such trip or trips, provided that the county superintendent of education, under such conditions, can receive reimbursement for actual traveling expenses incurred only upon the production of receipts properly itemized.

In answer to your second question, I am of the opinion that reimbursement for actual traveling expenses incurred by the county superintendent of education under authority granted, and in the manner set forth above, may be allowed by the County Board of Education and be authorized for pay-

ment only from the county three-mill school tax, or the bonus fund allowed by the State.

The contract in this instance was executed May 27, 1927, prior to the adoption of the School Code of 1927, and therefore the legal right to enter into such a contract is governed by the law as it existed prior to the adoption of said School Code of 1927. The general law in existence at the time of the execution of said contract may be found in what is commonly known as the School Code of 1924 (not in fact a Code), particularly Sections 77, 83, 88, 106, 114, 118, 119, 211, 248 and 249. While nowhere in the law as it existed at that time was it specifically provided that a county superintendent of education should attend such an educational convention or meeting, nevertheless, it was then the duty of the County Board of Education to seek in every way to promote the school interests of the county, and if, in its judgment, it deemed it to the promotion of the school interests of the county to direct the couny superintendent of education to attend a meeting involving educational problems, it was within the province of the county board, upon determination of same being advisable and proper, to direct such action on the part of the county superintendent of education, and to provide for his reimbursement for actual traveling expenses incurred in doing so, out of any funds not specifically limited by law to other uses.

The effect of the contract in the instant case is to grant an annual compensation of $3,100.00 to the county superintendent of education with the provision that from this sum he should pay all traveling expenses incurred by him in the performance of his official duties, with the further proviso that, if the County Board of Education deemed it advisable, it could grant him additional traveling expenses for the sole purpose of attendance upon educational meetings. It was not the intent and purpose of this proviso in the fourth paragraph of the contract to allow lump sum appropriations for this latter purpose, and, indeed, if such had been the intent of the board, the proviso in this regard would have been contrary to the spirit and intent of the law, for it has been the uniform policy and custom throughout the State that where a public official makes a particular trip which he is authorized to do in the conduct of the affairs of his office, he should be allowed, if anything, only reimbursement for actual traveling expenses incurred in doing so.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Copy to:
Superintendent of Education,
Capitol.
Superintendent of Education of Pickens Co.,
Carrollton, Alabama.

June 18, 1928.

State Forester,
Montgomery, Alabama.

Dear Sir:

License Tax—Distillers of turpentine or rosin; tax ascertained by State Auditor and collected by State Treasurer; tax to be paid by operator.

Opinion of Assistant Attorney General Smith.

I have your letter of June 12, 1928, in which you request the opinion of the Attorney General on the following questions of law involving the payment of license and privilege taxes paid by the various forest industries of this State which are as follows:

1st. Does the procedure set out in Schedule 110 of the Act approved September 15, 1919 (General Acts, 1919, p. 435), provide an exclusive way of determining license fee for the operation of distilleries of turpentine or rosin or do distillers of turpentine or rosin come under the first paragraph of Section 361 of said Act as to **method** of paying license.

2nd. In the event of failure to pay said license tax required, does the collection of the tax devolve upon the license inspector as in other cases.

3rd. In cases where the **owner** and the **actual operator** of the still are different persons, which shall pay the license tax.

I am of the opinion that the matter referred to in your first question is entirely and exclusively governed by said Schedule 110, which is as follows:

"Schedule 110. Distillers of Turpentine or Rosin.—Each person, firm, partnership, corporation or association operating a turpentine still or stills for the purpose of distilling or manufacturing spirits of turpentine or rosin, shall pay an annual privilege tax as follows: On each still having a capacity of sixteen barrels or less, twenty dollars; on each still having a capacity of over sixteen barrels and not over twenty barrels, thirty-five dollars; on each still having a capacity of over twenty barrels and not over twenty-five barrels, forty-five dollars; on each still having a capacity of twenty-five barrels or over, sixty-five dollars. Each owner or operator of a turpentine still or stills shall make and file with the State Auditor a sworn statement by the first day of October, 1919, and on the first day of October of each year thereafter, showing the number of stills operated by him or them for any period of the preceding year, and the capacity of each still operated. From this statement the State Auditor shall determine the amount of license tax due and shall make a draft for said amount and turn same over to the State Treasurer for collection. If any owner or operator of any turpentine still or stills fails or refuses to make or file the sworn statement herein required, the Auditor shall proceed to determine the amount of tax due hereunder from the best available means, and turn the same over to the State Treasurer for collection, as herein before required, and if the license tax determined by the Auditor to be due is not paid on which

payment is demanded by the State Treasurer, ten per cent of the amount due shall be added as a penalty, and ten per cent additional shall be so added for each subsequent month in which each license tax remains unpaid; and any person who makes or files false statement as to the number of stills operated, or as to the capacity of such still or stills, shall be guilty of perjury and on conviction shall be punished as in other cases of conviction for perjury under the laws of the State of Alabama."

This Act clearly provides that an annual privilege tax on each person, firm, partnership, corporation or association operating a turpentine distillery is to be ascertained according to the capacity of the still. Each owner or operator of a turpentine still or stills shall make and file with the State Auditor a sworn statement by the first day of October of each year, showing the number of stills operated by him or them for any period of the preceding year and the capacity of each still operated. **From this statement** the State Auditor determines the amount of license tax due and makes draft for said amount and turns same over to the State Treasurer for collection. The method of collecting said tax is then provided in the schedule.

The method prescribed in the above quoted section provides a complete scheme as to time, manner and basis for the collection of privilege tax on turpentine distillers, and the only and exclusive method of collecting the tax so provided.

In answer to your second question I am of the opinion that the Statute does not impose any duties on license inspectors in the administration of this schedule.

In answer to your third question I am of the opinion that the tax is put upon the **operator** of the turpentine still. The owner of the still, if he operates it is of course liable for the tax, but should the owner lease, rent, or loan the still to another person, and the still be operated by such other person, then the license is to be paid by the operator and not the owner. It depends on who in fact is the real operator. The servant or employee of the owner of the still which is being operated is not subject to the tax. The owner, in such a case, is the party liable. In this connection, however, see Section 369, Act approved September 15, 1919 (General Acts, 1919, p. 443) as to persons acting as agents for unlicensed concerns, etc.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 18, 1928.

State Highway Commission,
Montgomery, Alabama.
Attention: Mr. George L. Moulton, Assistant Engineer.
Gentlemen:

Traffic Laws—Guide boards.

Highway Commission may also make rules and regulations providing for prosecution of persons trespassing upon or traveling on green pavement.

Opinion by Assistant Attorney General Brassell.

I have your letter of February 23, 1928, together with enclosures, in which you state that persons in Jefferson County, tear down and destroy barricades, and enter upon roads which are being paved.

You request my opinion.

> What legal action can be taken against parties who destroy barricades and enter upon roads that are closed with proper barricades and signs erected for the purpose of paving or constructing highway?

In answer to your question, I am of the opinion that the State Highway Commission has authority under Section 19 of the Act approved August 23, 1927 (General Acts, 1927, p. 354), to make such rules and regulations as are necessary for the preservation of the roads **under construction**. Section 182 of said Act provides the penalties imposed for violations of such rules.

> Union Indemnity Company v. State for use of McQueen Smith Farming Co., 114 So. 415.

It must be understood, however, that such rules and regulations as are adopted by the Highway Commission, must be definite, clear, and specific, and must in no case be in any way contrary to any criminal statute relating directly or indirectly to such matters. Also, those rules and regulations which are established by the Highway Commission, and which are of a penal nature, should be published so that the public may be fully aware of same.

Your attention is invited to Section 102 of the Act approved August 23, 1927, known as "The Highway Code of Alabama, which makes it a misdemeanor for any person to wilfully destroy, knock down, or remove any milestone, post, or guide board, set upon the road or highway, or wilfully to deface or destroy any letter or figure thereon.

In my judgment, this section relates to temporary as well as permanent signs of the class mentioned, when same have been erected by the State Highway Commission. For instance, a detour sign placed upon a highway by the State Highway Commission, would be one of the signs covered by this section. Also where the Highway Commission has put a sign across a highway and upon that sign has stated that the highway is closed because under construction, such sign would be a post or guide board within the meaning of said Section 102.

It is obvious that the Highway Commission, in making its rules and regulations of a penal nature could not go contrary to Section 102 of said Act, but it might make additional rules and regulations on related subjects, for the violations of which, Section 182 provides the penalty. It is the duty of peace officers generally, and also of the local solicitors, to take care that these laws are enforced, and in this connection, your attention is invited to Section 6½ of the Act above cited.

Yours truly,

CHARLIE C. McCALL,
Attorney General.

June 18, 1928.

Hon. John C. Anderson, Mayor,
Collinsville, DeKalb County, Ala.
Dear Sir:

Notary Public moving his residence from the county in which he is appointed vacates office.

Opinion by Assistant Attorney General Brassell.

I have your letter of June 8, 1928, in which you desire to be advised as to whether or not a Notary Public vacated his office when he moves from the county for which he is appointed.

You request my opinion:

"Does a Notary Public who moves from the county in which he is appointed vacate his office as a notary if he should move back in the county for which he was originally appointed after the expiration of four months?

I assume that you mean moving his legal residence from the county for which he is appointed, and upon that assumption this opinion is based.

In answer to your question, I am of the opinion that whenever a Notary Public moves his legal residence from the county for which he was appointed, he vacates his office as a notary.

Sections 9238 and 9240, Code of Alabama, 1923.

By Section 9240 of the Code, supra, it is provided:

"They vacate their office by removal from the county."

The appointment of a person as a Notary Public contemplates resident citizenship, i. e., a qualified elector. Should a Notary Public move his residence from the county for which he was appointed with no intention of returning, he ceases to be a notary, notwithstanding the fact that he moves back to the county the next day.

Biennial Report of Attorney General, 1910-12, p. 22.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 18, 1928.

Judge of Probate,
Rockford, Coosa County, Ala.
Dear Sir:

Lost, destroyed, or mutilated records substituted by the Circuit Court. Costs borne by party offering to substitute.

Opinion by Assistant Attorney General Brassell.

I have your letter of June 4, 1928, in which you state that the Court House of Coosa County was burned, and most of the records in the office

of the Register in Chancery were destroyed by fire. You further state that the Court of County Commissioners is considering having the original files re-recorded.

You request my opinion:

1. In re-copying and binding the records is it necessary to follow the procedure prescribed by Sections 6514, 10125 and 10139 of the Code of Alabama, 1923?

2. Would the cost of re-copying be a proper charge against the county or should it be paid by the parties interested?

In answer to your first question, I am of the opinion that the procedure prescribed by Sections 6514 and 10139, Code of Alabama, 1923, must be followed strictly in substitution of lost, destroyed or mutilated records. Section 10125, Code of Alabama, 1923, has no application to the matter presented by you.

Worrell v. The State, 15 Ala. App. 126.

The Circuit Courts of this State have always had jurisdiction to establish or restore lost, destroyed or mutilated records, and any person giving security for costs may invoke the jurisdiction of such courts by following the procedure prescribed by Section 10139, supra. The costs of such substitution are to be paid by the party moving to substitute, as is provided by Section 10136 of said Code.

Section 10125, supra, simply provides for the reading of the minutes of the Court each morning and the signing of such minutes by the presiding judge on adjournment of the court.

By Section 6514 of the Code of Alabama, 1923, the Register of the Circuit Court in Equity **undoubtedly** has the power to re-copy any record or book that the law requires him to keep, and to secure such records from damage, or loss. For such services, the Court of County Commissioners **must** allow the Register a reasonable compensation. However, the compensation mentioned in this Section, supra, is to be determined by the Court of County Commissioners and the Register.

Osburn v. Henry, Treasurer, et al., 200 Ala. 353.

In answer to your second question, I am of the opinion that, if the re-copying be of such records as the Register of the Circuit Court in Equity is required to keep, from damage, or loss under Section 6514 of the Code, supra, the costs thereof, would be a proper charge against the county. If, however, it should be the costs of substituting lost, destroyed, or mutilated records, as are contemplated by Section 10139 of the Code of Alabama, 1923, then, the costs are to be paid by the person filing the proceeding to establish such record or records.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 19, 1928.

The Secretary of State,
Capitol.

Dear Sir:

Banks and Banking—Section 6975, Code, 1923, applies to incorporation of State Banks.

Opinion by Assistant Attorney General Evans.

Your letter of June 14th received:

You request my opinion:

In the organization of a State bank, is the Judge of Probate required to file with the Secretary of State, the statement provided by Section 6975, Code of Alabama, 1923?

In my opinion bank corporations must be formed under the provisions of Article I, of Chapter 274, of the Code, 1923, as supplemented by certain requirements contained in Article I, of Chapter 263, of said Code.

The provisions in regard to incorporating banks found in Article I, of Chapter 263, were not intended by the Legislature to be plenary, but only supplemental to the requirements of Article I, of Chapter 274. Wherever there is an irreconcilable conflict between the two named Articles, the provisions under Article I, of Chapter 263, will prevail; as the Act from which it was codified was of later passage than the laws contained in Article I, of Chapter 274. Where there is no such conflict, the provisions of both articles, as relating to such incorporation, must be complied with. This is shown by certain expression found in each of said Articles. Take, for instance, sub-section (4) of Section 6965, as revised by the Code Committee, which is a part of Article I, of Chapter 274, it provides among other things, as follows:

"* * * * but if the corporation is formed for the purpose of carrying on the business of banking, * * * the amount of capital with which it will begin business shall, in no case, be less than is provided in this Code."

Where then, in said Code, is the amount with which "a corporation formed for the purpose of carrying on the business of banking," provided? I find in Section 6336, a part of Article I, of Chapter 263, under the head of "Banks and Banking."

In several sections of Article I, of Chapter 263, where the subject of incorporating banks is being legislated on, we find the expression "as provided by law," evidently referring to the provisions of Article I, of Chapter 274, providing for incorporating business corporations.

Since there is nothing in Article I, of Chapter 263, in conflict with Section 6975, part of Article I, of Chapter 274, it follows that Section 6975 must be complied with in incorporating State banks.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 19, 1928.

Mr. Earl M. Hodson,
County Superintendent of Education,
Moulton, Alabama.

Dear Sir:

"Insurable interest"—School buildings. The County Board of Education, having the care and custody of property, or the duty of keeping it safely, have an insurable interest therein. American Ins. Co. v. Newberry, 215 Ala. 587.

Opinion of Assistant Attorney General Evans.

Your letters of May 7th, 9th and 26th, and copy of deed from Sallie F. Wilson and P. P. Wilson to B. H. Dorman, W. F. Holland and P. P. Wilson, trustees, have been received.

You wish to know if the County Board of Education can insure a certain schoolhouse and pay the premiums on the policy out of the proceeds of the special three mill district school tax?

In reply will say that you fail to state enough facts upon which to predicate an opinion. I infer from what you say that the County Board of Education has in its custody and under its control a certain building which it is using and has used for a long time and expects to use for a long while yet, for district school purposes, in the district where the special three mill tax has been levied for school purposes. You wish to know if the County Board of Education has the legal right to insure such building and pay the premium out of the proceeds of such tax.

If the foregoing is a correct statement of the situation, I advise that such can be done. In the case of American Insurance Co. vs. Newberry, 215 Ala. 588, our Supreme Court says: "The principle is well settled, also, that agents and trustees who have the care and custody of property or the duty of keeping it safely, have an insurable interest therein." By Section 95 of the Alabama School Code, 1927, "all the property, estate, effects, money funds, claims, and donations now or hereafter vested by law in the public school authorities of any county for the benefit of the public schools of any county, hereby transferred and vested in the County Board of Education, and their successors in office. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, shall be held in trust by the County Board of Education for the benefit of any such county school or district."

The foregoing section of the School Code clearly places the care and custody of said building in the County Board of Education and imposes upon said Board the duty of keeping it safely.

The fact that Section 134 of said School Code requires the County Board of Education to see that every school building whose title is vested in the state, county or school district is insured for its insurable value, does not take away the right of the County Board of Education to insure in a case, otherwise proper, where the legal title is not so vested.

American Insurance Co. v. Newberry, 215 Ala. 589.

When we say that the premiums may be paid out of the district three mill school tax, it is understood that the school house in question is used **exclusively** for the benefit of the **school district** that **pays the tax.**

Alabama School Code, Section 289.

In insuring such a building it is advisable that the insurer be advised of the exact condition of the title to the property. "Where the company has, with knowledge of the nature of the interest of the insured, recognized such interest as sufficient to support a policy, it cannot question the sufficiency of such interest"

American Insurance Co. v. Newberry, 215 Ala. 589.

Of course the County Board has no authority to insure said building beyond the time it is used for school purposes. The insurance policy may be for such an amount as will protect the County Board against loss of its insurable interest. Also, the power to insure is in the County Board and not the local school trustees.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 19, 1928.

Hon. Joseph E. Jones,
County Solicitor,
Evergreen, Alabama.

Dear Sir:

Only one solicitor's fee and trial tax can be collected where more than one person is indicted and tried jointly.

Opinion by Assistant Attorney General Haynes.

I have your letter of June 6th, 1928, in which you request my opinion:

Can the Clerk of the Circuit Court tax more than one solicitor's fee or more than one trial tax where two or more persons are indicted and tried jointly?

It is my opinion he cannot.

In answer to your first inquiry, your attention is invited to Dent v. State, 48 Ala. 514, and Brown v. State, 46 Ala. 148.

The cases, supra, hold that only one solicitor's fee can be taxed in cases where one or more persons are jointly indicted and convicted for the same offense. In the case of Brown v. State, supra it is said:

"On the conviction of several defendants on an indictment for disturbing religious worship but one solicitor's fee can be tax against all of the defendants found guilty as a part of the cost."

As to your second inquiry, Section 4½ of an Act approved September 15th, 1919 (General Acts, 1919, page 282), is as follows:

"Section 4½. That a trial tax of three dollars be, and the same hereby is imposed in each case, civil, criminal and equity, which hereafter goes upon the docket of any **circuit court** in this State, to be taxed and collected as other costs, and when collected, to be paid by the clerk of such court, into the general funds of the State Treasury."

This section provides a trial tax of three dollars "in each case * * * hereafter going upon the docket of the **circuit court** of this State." This tax only applies to cases in the circuit court, and no other. No matter how many defendants might be charged in the same indictment, when this case goes on the docket it constitutes only one case, and therefore, the clerk will be authorized to charge only one trial tax.

This opinion is limited to the question propounded by you and does not attempt to cover the trial tax law in other cases.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 19, 1928.

The Treasurer,
Hamilton, Marion County, Alabama.

Dear Sir:

Extradition—County must pay for extradition of parents of children or husbands of wives on charge of abandonment .

Opinion by Assistant Attorney General Haynes.

I am in receipt of your letter of June 12, 1928, in which you state that the Sheriff of your County went to Texas as a duly authorized agent to extradite one Ballard for desertion, and you request the opinion of the Attorney General as follows:

Would I be protected in paying a warrant for the expenses of the sheriff in bringing Ballard back to Marion County for trial, said warrant being authorized or drawn by the Court of County Commissioners of Marion County?

In my opinion you would.

Section 4491, of the Code of Alabama, 1923, makes the following provisions in cases of this character:

"4491. JURISDICTION OF OFFENSE; EXTRADITION OF DEFENDANT.—Any offense under this chapter shall be held to have been committed in any county in which such wife and child or children, may be at the time such complaint is made. Whenever the judge, within whose jurisdiction an offense under this chapter is alleged to have been

committeed, shall, after an investigation of the facts and circumstances thereof, certify that, in his opinion, the charge is well founded, and the case is a proper one for extradition, or in any case, if the cost of extradition is borne by the parties interested in the case, the person charged with having left the State with the intention of evading the terms of his probation, or of abandoning, or deserting his wife, child or children, shall be apprehended, and brought back to the county having jurisdiction of the case, in accordance with the law providing for the apprehension and return to this State, of fugitives from justice, and, upon conviction, punished as hereinbefore provided. **When the judge of said court shall certify, as above provided, all costs incurred by the sheriff, or other officers in bringing such husband or parent from other states, or from other counties of this state, into the county where the offense shall have been committed, and all costs incident to such extradition of such husband, parent or parents, shall be paid by the county in which such offense shall have been committed.** and the county commissioners or the board of revenue shall make such appropriation as may be necessary to carry into effect the provisions and purpose of this section.

The Section above quoted is a new section, appearing in our Code for the first time in the Code of 1923, and our courts do not seem to have construed same, but its provisions are plain.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 19, 1928.

Mr. John T. Richardson,
License Inspector,
Marion, Perry County, Alabama.

Dear Sir:

License Tags for Automobiles—Transfer of.
Opinion by Assistant Attorney General Rayburn.

I have your letter of March 2, 1928. You state the automobile of a person, for which automobile he had legally procured a license tag, was destroyed by fire, and the license tag was stolen and that, thereafter, such party attempted to 'sell his title" to another person, and later secured a duplicate tag for transfer.

You request my opinion:

1. Under the above statement of facts can such party legally transfer his license tag 'or title" to another person, for use on an automobile of the same horse power, provided the transfer is effected through the office of the judge of probate within the time as otherwise required by law?

2. Where a person purchases what is known as a "private" tag, without, at the time owning the car on which it is to be used, can such person after purchasing said tag, transfer the tag to another person for use on an automobile of the same horse power, provided the transfer is effected through the office of the Judge of Probate within the time and as otherwise required by law?

In answer to your first question, I do not quite understand what you mean by saying that after the destruction of the car, the owner thereof sought to sell his "title" to another person. Of course, the car having been destroyed, he had no car to sell. I assume that you mean that, after the destruction of his car, the person sought to transfer a duplicate of the stolen tag to another person. Based upon this assumption, it is my opinion that a transfer of a duplicate tag may be effected in the same manner as a transfer of the original tag could have been effected.

In answer to your second question, I am of the opinion that, under the conditions set forth therein, the transfer cannot be effected, for the reason that a person cannot legally get a license tag for use on a motor vehicle until he assesses and pays the ad varolem tax due thereon. Of course, he cannot pay the tax if he has no car; and if he has no car he needs no license to run that which does not exist.

Sub-section (f), Section 19, Act approved September 13, 1923 (General Acts, 1923, page 289).

Op. Attorney General, March 12, 1925, Vol. 1, 1925, Office Edition.

You are doubtless familiar with Section 24, Act approved September 13, 1923 (General Acts, 1923, page 292), prescribing the manner of procedure for securing a duplicate tag where the original has been stolen, mutilated or destroyed. The pertinent part of this Section is as follows:

"In case the tag becomes mutilated beyond recognition the owner of the motor vehicle may file with the State Tax Commission an affidavit setting forth the fact that the tag has been lost, mutilated or destroyed, and upon the payment of one dollar, there shall be issued to him by said Commission, a new tag. In case of a mutilated tag, same shall be forwarded with the affidavit to the State Tax Commission and should the lost tag reappear and come into his possession, it shall be the duty of the person obtaining the new tag to immediately forward the old or replaced tag to the State Tax Commission. Should he or anyone else use upon any motor vehicle the old or replaced tag, he shall be fined twice the amount of the license required for motor vehicles upon which the license tag is used and shall also be required to procure a license for said motor vehicle. Anyone who makes any false affidavit in obtaining a tag from the State Tax Commission shall be guilty of perjury."

Section 12 of an Act approved September 13, 1923 (General Acts, 1923, page 285), governs the transfer of tags on private cars. The pertinent part of said section is as follows:

"* * * * * persons paying an automobile license may have the same transferred to any other person, or to any other car, provided the same is not of a greater horse power, by applying to the probate judge who issued the same, and it shall be his duty to make a record of the transfer, which shall be in writing * * * * *."

The right to transfer automobile tags is granted only to the original purchaser of the tag, i. e., the person who first obtained it legally.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 19, 1928.

Probate Judge,
Greenville, Butler County, Alabama.

Dear Sir:

License tax on trucks of two tons and less than three tons using exclusively motor fuel on which excise tax has been paid—$50.00. Trucks of two tons and less than three tons not using motor fuel on which excise tax has been paid—$325.00.

Opinion by Assistant Attorney General Brassell.

I have your letter of October 24th, 1927, in which you state that several persons in your County are operating G. M. C. Model T. 50 Trucks, and that the rating book furnished by the State Tax Commission rates such trucks as of two ton capacity, but such trucks actually transport four tons.

You request my opinion:

What license tag should G. M. C. Model T. 50 Trucks carry?

I assume that you desire to know the amount that should be charged as a license tax on trucks as mentioned by you when the excise tax upon motor fuel used by such trucks has been paid, and on that assumption this opinion is based.

In answer to your question, I am of the opinion that the license tax on a truck of two tons and less than three tons is $50.00, whenever such truck uses exclusively motor fuel on which the excise tax imposed by this State, has been paid, or motor fuel which will be included in the report required to be made to the State Tax Commission.

Section 17 of an Act approved July 22nd, 1927 (General Acts, 1927, page 157).

For each truck of two tons and less than three tons using any motor fuel on which excise tax imposed by this State has not been paid, or which will not be reported to the State Tax Commission as motor fuel sold or stored in this State, on which the excise tax imposed on motor fuel will not be paid, the license tax on such truck is $325.00.

By the Act approved July 22, 1928, supra, every person making application for a license to use a truck on the highways of this State, shall be required to make an affidavit before the Probate Judge of the County, in which such application is made, as to whether the gasoline, or other motor fuel oil on which the excise tax of four cents per gallon as imposed by this State, is to be used in operating the truck for which the application for license is made.

Notwithstanding the fact that the G. M. C. Model T. 50 trucks transport as much as four tons dead weight, the Legislature has fixed the license tax to be paid on such trucks at $50.00, when the affidavit states that the excise tax on the motor fuel used will be included in the report required to be made to the State Tax Commission.

The license tax on all trucks is based upon two propositions: First: Manufacturers' tonnage, and not the transporting capacity of the trucks. Second: Upon motor fuels to be used, i. e., whether or not the excise tax has been paid as herein stated.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 20, 1928.

Clerk, Recorder's Court,
Mobile, Mobile County, Alabama.
Dear Sir:

Fees—Solicitor's fee for failing to take out automobile license, and for failing to display a license tag on an automobile. Acts cited.

Official opinion by Assistant Attorney General Haynes.

Your letter of January 10th, 1928, to Hon. John S. Turner, Associate Member, State Highway Commission, has been referred to me for answer. In it you state that you have been charging $30.00 solicitor's fee in cases where persons are charged with violating the law which regulates payment of automobile license. Upon this statement of facts you request my opinion.

1. What is the solicitor's fee in cases in which persons are charged with failing to take out automobile license?

2. What is the solicitor's fee in cases in which persons are charged with failing to properly display license tag on automobiles?

In my opinion thirty dollars is the proper amount of solicitor's fee in cases where persons are charged and convicted for failing to take out automobile license. A prosecution for failing to take automobile license would come under Section 367, Act approved September 15, 1919 (General Acts, 1919, page 443) (Section 5424, Code of Alabama, 1923). The amount to be taxed as solicitor's fee when a conviction is had, not being specifically provided in Section 3738, Code of Alabama, 1923, and this being a prosecution

for the violation of the Revenue Laws of the State, the same is governed by that sub-division of said Section 3738, which is as follows:

"For each conviction of a violation of the **revenue** law, not **otherwise** provided for, $30.00."

An Act approved September 13, 1923 (General Acts, 1923, page 290, Sec. 20), provides as follows:

"It shall be a misdemeanor punishable by a fine of not exceeding twenty-five dollars for each offense to display the tag on **any place other than** the rear of the motor vehicle, **or**, for operating a motor vehicle on the public highways of the State **without a license tag** displayed as herein provided."

Section 3738, Code of Alabama, supra, fails to provide the amount of solicitor's fee to be taxed for the violation of the Section quoted above, and therefore, the solicitor's fee is governed by that sub-division of this Section, which is as follows:

"For each conviction of a misdemeanor not provided for, $10.00."

This office has heretofore rendered opinions in accord with the opinion rendered above. They are as follows:

Op. Oct. 1, 1927, to Chief Examiner of Public Accounts.
Op. Oct. 18, 1927, to Circuit Clerk, Butler County.
Op. Oct. 25, 1927, to Circuit Clerk, Butler County.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

June 22, 1928.

The County Superintendent of Education,
Elba, Coffee County, Alabama.
Dear Sir:

School Warrants—Sale of.

Opinion by Assistant Attorney General Rayburn.

I have your letter of June 19, 1928.

You state that the County Board of Education is preparing to sell $13,500.00 worth of school warrants for the purpose of building school houses in said county, and that you have an offer to dispose of such warrants bearing five and one-half per cent interest at $97.00.

You request my opinion:

Would such a sale be legal?

It is my opinion that such a sale would not be legal if said sale price of said warrants named by you is below the par value thereof; and if said sale price so named is at par value, then said sale would be legal, provided

that Section 281, Alabama School Code, 1927, is strictly followed, and an accurate record is kept of said sale and matters incident thereto.

Section 281, Alabama School Code, 1927, is as follows:

"281. WARRANTS SOLD AND TAX PLEDGED FOR PAYMENT.—In any county which has levied or is levying a special county tax for school purposes, the County Board of Education, in order to erect, repair, enlarge or equip school buildings, or to make other improvements in the school facilities of the county, or to raise money for any such purposes, may issue and sell school warrants bearing interest at a rate not to exceed six per centum per annum for an amount, including interest not exceeding the income from said tax levy, estimating such income upon the basis of the assessed value of the taxable property in such county for the preceding tax years, as the annual return for such levy, for the period for which warrants are issued. The Board of Education of any county or of any city having a City Board of Education, in order to erect, repair, enlarge or equip school buildings or to make improvements in the school facilities of any school district under its control in which a district school tax has been or is being levied, or to raise money for any such purposes, may issue school warrants bearing interest at a rate not to exceed six per centum per annum for an amount, including interest, not to exceed the income from such tax levy, estimating such income upon the basis of the assessed value of the taxable property in such city or school district for the preceding tax year, as the annual return from such levy for the period for which such warrants are issued."

The rate of interest named by you, viz.: five and one-half per cent, which said warrants are to bear, is, under said Section 281, legal. The inhibition as regards interest on school warrants is that they should bear a rate of interest **not to exceed** six percentum per annum.

Said warrants must be issued for the purposes named in said section, and for no other, and cannot exceed the income from the tax levy against which said warrants are issued, estimating such income upon the basis of the assessed value of the taxable property in the county for the preceding tax years, as the annual return for such levy for the period for which such warrants are issued.

Ops. Atty. Gen'l, 1927, Vol. 2, p. 155 (Office Edition).
Ops. Atty. Gen'l, 1927, Vol. 2, p. 186 (Office Edition).

Warrants issued against a school tax cannot legally be sold under par. Such a procedure is contrary to law. Were such warrants sold below par, you or your official bondsmen would be liable for such an illegal expenditure of public funds.

Ops. Atty. Gen'l, 1927, Vol. 2, p. 231 (Office Edition).

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Note: See opinion Aug. 10, 1928, amplifying this and making further explanation.

JJH:ML
June 25, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Capitol.

Dear Sir:

Costs—for keeping or storing contraband property where State fails; cannot be paid out of the Law Enforcement Fund.

Opinion by Assistant Attorney General Haynes.

I have your letter of January 18, 1928, in which you state: in the matter of court costs where automobiles or other vehicles are sought to be condemned when seized, while transporting prohibited liquors, and the State fails in its efforts to condemn, and the cost is required to be paid by the State by warrant drawn by the State Auditor under Section 4785, Code of Alabama, 1923, an item frequently appears where the Register charges up certain amounts for storage.

Upon this statement of facts you request my opinion:

1. Can this item of cost be paid out of the law enforcement fund where the State fails in its efforts to condemn?

I am unable to find any statute or law authorizing the payment of this charge. All cost is penal in its nature, and the statute regulating cost must be strictly construed. See Section 3734, Code of Alabama, 1923, which is as follows:

"3734. NO FEE CHARGED UNLESS EXPRESSLY AUTHORIZED.—The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."

From the above quoted section it is plain that before an officer is entitled to any item of cost he must be able to point to some direct statute authorizing the charge.

Troup v. Morgan Co., 109 Ala. 162.
Dent and McGruder v. State, 42 Ala. 514.

I recognize that under Section 4782, Code of Alabama, 1923, that in the distribution of funds arising from the sale of forfeited vehicles, etc., that it is provided as follows:

"PROCEEDS OF SALE OF CONTRABAND OR FORFEITED PROPERTY; DISTRIBUTION AND DISPOSITION OF FUNDS. —The proceeds of the sale of any such property forfeited to the State, whether sold by court decree or by an officer under advertisement, shall, after paying all expenses in the cause, and of advertisement, as the case may be, including the costs of seziure and of **keeping the property** pending the proceedings, shall be applied as follows: One-fourth to the officer

making the seizure and furnishing the proof, but if proof be furnished by another person than the officer making the seizure, one-eighth of the proceeds shall go to the furnisher of the proof and one-eighth to the officer making the seizure and assisting in the condemnation case, or who makes the sale under advertisement. The remainder of the proceeds shall be paid into the treasury of the State as a law enforcement fund to be used and applied for the enforcement of State laws under the supervision and control of the Governor, same to be paid out on warrant of the Auditor on a bill against the State approved by the Attorney General and Governor."

You will note from the above section that this is based wholly on the sale of the property made under a decree of court, where the State has been successful, and the provision which provides: "for the keeping of the property," is where the State has been successful in its efforts to condemn.

I am of the opinion that the costs of keeping or storing, can in nowise be construed as a part of the court costs as it grows out of no branch of the legal proceedings.

Now, should the statute read as follows:

"There should be taxed as costs in all proceedings to condemn and forfeit to the State all contraband property growing out of the prohibitory laws of the State, or their enforcement, all expenses in the cost, and advertising, as the case may be, including the cost of seizure, and keeping the property pending the proceeding."

Then, in that event, it would have to be taxed and paid whether the State was successful or not in its efforts to condemn, but, reading as it does,

"The proceeds of the sale of any such property forfeited to the State * * *"

makes clear the legislative intent which is that the cost of the keeping of such property can only be taxed against the State and paid out of the proceeds of sale when the State is successful in its efforts to condemn; then, it natuarlly follows that the cost of storage and keeping of such property is not such an item of cost as can be paid out of the law enforcement fund, under Section 4765, Code of Alabama, 1923, when the State is not successful.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 25, 1928.

State Tax Commission,
Capitol.

Gentlemen:

Licenses—Cross-ties. Construing Schedules 125 and 126, Section 361, Act approved September 15, 1919. (Revenue Law).

Opinion by Assistant Attorney General Koonce.

I have your letter of February 24, 1928. In it you state that there are many people in the State who buy cross-ties from those who make the ties in small quantities. You also state that as these ties are bought they are held until a sufficient quantity accumulates to make a car-load and that the person doing the buying sells them in car-load lots to various railroads, some in the State and some without the State. Upon this statement of facts you request my opinion:

> Must a person who buys cross-ties in small quantities and sells them in car-load lots in this State and in other states, pay the license outlined in Schedules 125 or 126 of Section 361, Act approved Sept. 15, 1919 (General Acts, 1919, p. 438)?

In my opinion, a person who buys cross-ties in small quantities in the State and sells them in car-load lots in the State, must pay the license required by Schedule 126, supra.

In my opinion, a person who buys cross-ties in small quantities in the State, and sells them in car-load lots without the State, is not required to pay the license outlined in Scheduled 125, supra.

In my opinion, a person who buys cross-ties in small quantities in cities in the State and sells them, either within or without the State, is not required to pay the license outlined in Schedule 125, supra.

My predecessor construed Schedule 126, supra, on January 3, 1924, in an opinion to Mr. Brenton K. Fisk (Vol. 1, Op. 1924, p. 7), said opinion contains the following:

> "We have already frequently given it as our opinion that no license can be exacted of an exporter as such. So this Schedule 126 must be confined to wholesale dealers, jobbers, of lumbers and timber, and dealers in lumber and timber on commission."

On March 7, 1924, in an opinion to the Judge of Probate of Franklin County (Vol. 1, Opinion 1924, page 195), is found the following:

> "Exporters of lumber cannot be required by the State to pay a license. Only the United States Government can levy a license upon exporters."

In deciding whether or not a person who buys and sells cross-ties is a wholesale dealer or jobber of lumber and timber, we must first ascertain if cross-ties can be classed as lumber and timber.

The opinion of the Supreme Court in the case of Gulf Yellow Pine Co. v. Monk, 49 So. 248 (Ala.), contains the following:

"Timber is such stuff as is suitable for building or allied purposes."

Mr. Justice Bouldin, in his dissenting opinion in the case of Manchester Sawmills v. Jasper Land Co., 101 So. 47 (Ala.), wrote the following:

> "In Gulf Yellow Pine Lbr. Co. v. Monk, 159 Ala. 318, 49 Southern, 248, the court was dealing with a contract for timber to cut 12 inches at the stump. It was argued this expression was meaningless. In answer to that contention the court said: 'Timber is such stuff as is suitable for building and allied purposes.' As applied to the contract then in hand the expression was unquestionably correct. But as to hardwoods in general it may be said to be common knowledge that timber is marketed for the manufacture of handles, golf sticks, shuttles, outdoor furniture and many other purposes which would be too small for building purposes and the like."

In my opinion, the above definitions show that cross-ties are properly classed as timber, therefore, persons engaged in buying cross-ties and selling them in car-load lots in the State, are wholesale dealers and as such are required to pay the license outlined in Schedule 126, supra.

The fact that such buying and selling was carried on in a city or the fact that the cross-ties were stored in a city after having been purchased in small quantities would not, in my opinion, constitute the operating of a lumber yard as contemplated by Schedule 125, supra.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 25, 1928.

Judge of Probate,
Vernon, Lamar County, Ala.

Dear Sir:

Deed filing tax due for lease of mineral right, Section 21½, Revenue Act, 1927 (Acts 1927, p. 163 et seq).

Opinion by Assistant Attorney General Evans.

Your letter of January 11 addressed to Hon. Chas. E. McCall, Chief Examiner of Accounts, has been referred by him to me for reply. You sent copy of printed blank for lease of certain lands for the purpose of operating for gas and oil and of doing on said land whatever is necessary for such purpose. You desire to know if such an instrument requires payment of filing tax provided for by Section 21½ of Revenue Act, 1927 (Acts 1927, p. 163 et seq).

In reply will say that such an instrument is a deed or instrument in the nature of a deed.

Milliken v. Faulk, 111 Ala. 658.

It therefore, requires a filing tax. The amount of the filing tax depends on the value of the interest conveyed by the instrument. What would have been its reasonable cash value at the date of the execution of the instrument, if the transaction had been entirely for a cash consideration? This would be the measure of the tax as provided in said Act.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 25, 1928.

Hon. I. M. Presley,
Deputy Solicitor,
Fort Payne, DeKalb County, Ala.

Dear Sir:

Peddlers of Medicines—Persons exempt from privilege license therefor.

Opinion by Assistant Attorney General Rayburn.

I have your letter of June 19, 1928.

You state that there is a man in your county who has lost one of his legs, and that said person desires to peddle medicine.

You request my opinion:

Would said person be exempt from paying the State and county license required of peddlers of medicines?

The answer to your inquiry depends entirely upon whether or not said person is physically disabled to do manual labor, and upon said person's ability to procure a certificate from the county health officer, which certificate shall vouch for said physical disability.

Under Schedule 80 of an Act approved September 15, 1919 (General Acts, 1919, p. 425), the following persons are exempt from payment of State and county privilege license required of peddlers of medicines:

"Provided that no peddler's license shall be required of Union and Confederate veterans of the Civil War, nor of persons totally blind, **nor of persons who are physically disabled to do manual labor, who shall obtain a certificate from the county health officer as to such disability.**"

In construing the effect of this exemption, obviously there can be no hard and fast rule laid down. Each person claiming the benefit of said exemption must establish his claim thereto in the method and manner prescribed in the above quoted provision of Schedule 80.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 28, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Montgomery, Alabama.

Dear Sir:

Officers—de facto—payment of salary to—legality of right of county to hold disbursing officers responsible.

Opinion by the Attorney General.

I have your letter of April 20, 1928. It appears therefrom that under an Act approved August 27, 1927 (Local Acts, 1927, p. 202), the Governor appointed Mr. M. J. Sharpe as Judge of the Inferior Court in Precinct 12 of Jefferson County, and that, thereafter, proceedings were instituted in the Circuit Court of Jefferson County to determine Mr. Sharp's legal right to hold the office to which he had been appointed. Finally, on appeal, the Supreme Court decided that Mr. Sharpe was not qualified to hold said office because he was not licensed to practice law, the Supreme Court merely holding that the demurrers in the lower court were properly sustained (M. J. Sharpe v. State ex rel A. D. Elliott). It further appears that during the time Mr. Sharpe was holding the office (from October 4, 1927, to January 31, 1928), he was paid a total salary of $1,216.66 by county warrants drawn by the order of the Jefferson County Board of Revenue and paid by the County Treasurer.

You request my opinion:

1. Was said salary payment an illegal disbursement of public funds?
2. Should the amount paid be charged back to the Board of Revenue?
3. Is the chairman of the Board of Revenue liable to the county for issuing said warrants?
4. Is the County Treasurer liable on his official bond for payment of same?

1. That the salary payment was not an illegal disbursement of public funds.
2. That the amount should not be charged back to the Board of Revenue.
3. That the chairman of said Board of Revenue is not liable to the county for issuing the said warrants.
4. That the County Treasurer is not liable for having paid same.
5. That said Act became effective on the date of its approval by the Governor, to-wit, August 27, 1927. Your attention, however, being called to the fact that, under the provisions of said Act, the Governor was required to appoint a judge within twenty days after the approval of said Act, and such judge, when appointed, would be entitled to compensation beginning with the day on which he fulfilled all of the prerequisites therein specified, such as making bond, taking the oath, etc.

Under your statement of facts, Mr. Sharpe having been appointed by the Governor, and no doubt having made bond, etc., as required by law, was a **de facto** officer even though he did not possess the professional qualifications

outlined in the Act, and this, for the reason that he held the office by virtue of some "color of right."

Mechem on Public Officers, Sec. 318.

His acts were valid as to the public and third persons who dealt with him officially.

22 R. C. L., p. 607, Sec. 324—"Public Officers."

Though not strictly in line with your inquiry, it is interesting to note that the courts of this State hold that where a payment of salary has been made to a de facto officer, the de jure officer may not maintain suit against the municipality for the salary so paid the de facto officer for services performed by him while discharging the actual duties of the office.

Coe v. City of Dothan, 19 Ala., App. 33; Walden v. Town of Headland, 156 Ala. 562.

It has been held that the State Auditor cannot refuse to audit the accounts of a sheriff for feeding prisoners and conveying convicts to the penitentiary on the ground that he is not sheriff de jure when he is in possession of the office and performing its duties, after due qualification, under appointment by the Governor.

Reynolds v. McWilliams, 49 Ala. 552.

In the last above cited case it was said:

"The question to be decided is * * * whether the auditor can make that issue with him, in the matter of auditing his accounts.

"Before the auditor can be required to audit the proper charges of a sheriff, and to issue his warrant therefor on the state treasury, he must be informed by some evidence that the person making the application is the sheriff. He must be satisfied that he is not a mere pretender to the office, or a usurper intruding himself into it without color of right. **If he knows that the claimant, though appointed or elected by competent authority, has failed to comply with indispensable prerequisites to entering upon the duties, such as making bond, or taking an oath, or is holding over after the expiration of his term without any provision of law, he may refuse to recognize his right, and the court will not compel him to do so.** * * * The reason of this is, that the claimant has never perfected his right to the office, or it has ceased, within his knowledge. He is a wrong-doer, and the law will do nothing to encourage him, apart from the protection due to third persons and the public generally.

But, when the appointment or election is made under competent authority, and all necessary prerequisites have been complied with, if the claimant in the discharge of his duties of his office for the term for which he was elected or appointed, he cannot be interfered with except by a direct proceeding to set aside or annul his claim. This is partly in his interest, because he ought not to be held responsible for errors committed without fault on his part, by the appointing power.

The auditor occupies the relation of third person to the sheriff. If he may question the validity of his encumbency, in respect to auditing his claims against the State, and test the matter by suit, so may each suitor in court who may owe him fees; the judgment in every case being no bar to a suit between the sheriff and other parties on a like issue. Even a de jure sheriff would fall before such repeated assaults. It is manifest that the right muniments of title to an office must suffice to establish the right of the incumbent whenever it is collaterally called into question."

Reynolds v. McWilliams, supra.

The facts as presented by you in the instant case, deal with an entirely different situation from those considered by this office in an opinion rendered under date of October 26, 1927, wherein I held that Hon. J. Carl Sheppard, who had been appointed to an office created by the Legislature of 1927, could not draw compensation. Prior to the rendition of that opinion I had held that Sheppard was disqualified to hold said office. Thereafter he abandoned it and the Governor made another appointment. Then **Mr. Sheppard** made demand on the treasurer of Walker County for payment of salary during the time he held the office. The effect of my opinion in that instance was simply to hold that **Sheppard could not take advantage of the invalidity of his appointment,** there being no collateral attack, and the **public** and **third parties** not being involved.

In the instant case, the County Board of Revenue, the chairman thereof, and the County Treasurer are third parties in the same light as the Auditor was held to be a third party in the case of Reynolds v. McWilliams, supra, and if Mr. Sharpe was regularly appointed by the Governor and complied with all of the prerequisites to validating that appointment, the Board of Revenue, the chairman thereof, and the County Treasurer were under no obligation to look behind this "color of right" to determine the "latent" or hidden disqualifications.

Surely, if, as was held in Reynolds v. McWilliams, supra, such an officer cannot collaterally attack the right to hold the office, then that officer should not be held responsible for payments authorized and made to a de facto officer. This is on the ground of public policy and justice.

It has been held that where a salary has been paid to a de facto officer, it cannot be recovered back by the Government, at least where such officer has **actually rendered** the services for which he was paid.

32 L. R. A. (N. S.) 951.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 28, 1928.

The State Tax Commission,
Montgomery, Alabama.

Gentlemen:

Peddlers defined.

Opinion of Assistant Attorney General Rayburn.

I have your letter of June 22, 1928.

You state that you are in doubt as to whether or not you have correctly understood the rulings of the Attorney General on the subject of peddlers, with reference, particularly, to the definition thereof.

You request my opinion:

What is the meaning of the word "peddler" as used in Schedule 80 of an Act approved September 15, 1919 (General Acts, 1919, p. 425)?

In answer to your request, I advise you that this office has always drawn the distinction between persons selling merchandise to retail dealers for purposes of resale, and those who retail merchandise or other commodities from place to place. There is no ruling of this office which requires persons, firms or corporations who sell merchandise to retail dealers to take out a peddler's license.

This office has consistently followed the ruling of the Supreme Court on this subject, as pronounced in Randolph v. Yellowstone Kit, 83 Ala. 471, wherein the court, through Chief Justice Stone, held as follows:

> "The term 'peddler' has many definitions, more or less full. It is the noun of the verb to peddle, the definition of which is 'to go about and sell; to retail by carrying around from customer to customer; to hawk; to retail in very small quantities; "Webster's Dictionary; Worcester's Dictionary; Bouvier's Law Dictionary; Imperial Dictionary; Rapelje & Lawrence Law Dictionary. These several definitions vary somewhat in phraseology, but they are not very materially different in meaning. Its popular signification is, a small retail dealer who, carrying his merchandise with him, travels from house to house, or from place to place, either on foot, on horseback, or in a vehicle drawn by one or more animals, exposing his goods for sale, and selling them; and in the absence of something in the statute to control us, we must interpret the language employed by the Legislature in its proper sense."

I wish to amplify the foregoing definition to the following extent, viz.: a person who retails commodities or merchandise by carrying the same with him, regardless of the manner in which he carries said merchandise, i. e., motor drawn vehicle or otherwise, exposing his goods for sale or selling them, or both, from place to place, person to person, or house to house, is a peddler within the contemplation of Schedule 80 of an Act approved Sept. 15, 1919 (General Acts, 1919, p. 425).

The opinion of June 12, 1928, to the State Tax Commission, pertaining to corporations as peddlers is not inconsistent with the ruling herein made.

See Biennial Report of Attorney General, 1918-20, pp. 645, 647.
Opinions Attorney General, 1926, Vol. 1, p. 71 (Office Edition).

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 28, 1928.

The Commissioner,
Department of Agriculture and Industries,
Montgomery, Alabama.

Dear Sir:

Warehouse receipts—Cannot be issued for goods in one warehouse when the goods are actually stored at a warehouse at another location; must recite true facts.

Opinion by Assistant Attorney General Smith.

I have your letter of June 14th, 1928, in which you state that you have a petition requesting the privilege of a ginner at Banks, Alabama, to issue warehouse receipts for cotton to be later transferred and stored in a warehouse at Brundidge, Alabama. It is understood that the gin company at Banks is also the warehouseman at Brundidge, though operating under different names.

Upon this statement of facts, you request the opinion of the Attorney General on the following question:

Whether or not such operations as stated would meet the requirements of Articles 34 and 35 of the Agricultural Code of Alabama, 1927.

I am of the opinion this matter is governed by Section 409 of Article 34 of the Agricultural Code of 1927, which is as follows:

"409. CONTENTS OF WAREHOUSE RECEIPTS.—Warehouse receipts must embody within their written or printed forms—(1) The location of the warehouse where the **goods are stored;** (2) the date of issue of the receipts; (3) the consecutive number of the receipt; (4) a statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person on his order; (5) the rate of storage charges; (6) a description of the goods or of the packages containing them; (7) the signature of the warehouseman, which may be made by his authorized agent; (8) if the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with other, the fact of such ownership, and (9) a statement of the amount of the advances made and of liabilities incurred for which the warehouseman claims a lien, and (10) such other information is required by the rules and regulations relative thereto, promulgated by the State Board of Agriculture. If the precise amount of such advances made or such liabili-

ties incurred is at the time of the issue of the receipt, unknown to the warehouseman, or to his agent who issues it, a statement of the facts that advances have been made or liabilities incurred, and the purpose thereof is sufficient. A warehouseman shall be liable to any person injured thereby, for all damages caused by the omission of a negotiable receipt of any of the terms herein required."

You will observe that when a warehouseman issues a warehouse receipt it must state the **location of the warehouse where the goods are stored.** This language certainly contemplates that the goods set out in the receipt is in the **warehouse at the location stated** and at the time the receipt is issued. Should the warehouseman state in his receipt that the goods are in the warehouse described and it should appear that the goods were not stored in the warehouse as set out in the receipt, then in that even the warehouseman would be guilty of issuing a fraudulent receipt for goods, knowing that it contained a false statement in violation of Section 464 of the Agricultural Code of 1927, which is as follows:

"464. RECEIPTS CONTAINING FALSE STATEMENTS.—A warehouseman, or any officer, agent or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction, shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding One Thousand ($1,000.00) Dollars, or by both."

I am, therefore, of the opinion after carefully considering the sections of the Agricultural Code referred to herein, that the ginner or warehouseman at Banks could not legally sign a warehouse receipt for cotton at the gin or in a warehouse at Banks, where the receipt shows that the cotton was in the warehouse at Brundidge. The receipt referred to in Section 409 must recite the true facts.

I am returning the petition herewith.

Yours truly,

CHARLIE C. McCALL,
Attorney General.

encl.

June 28, 1928.

Hon. R. J. Jacobs,
Justice of the Peace,
Goodwater, Alabama, Route 3.

Dear Sir:

1. Justices of the peace prohibited from practicing law.
2. Justice of the Peace not required to consult solicitor before issuing warrants.

Opinion by Assistant Attorney General Rayburn.

I have your letter of June 21, 1928.
You request my opinion:

1st. Does the law require a Justice of the Peace before issuing warrants for law violators in matters over which said justice has jurisdiction to first consult the Circuit Solicitor, and secure the approval of said Solicitor?

2nd. Is it legal for a Justice of the Peace to prepare and issue summons and complaint in all civil cases coming within the jurisdiction of a Justice of the Peace, or must these papers be prepared by a regular practicing attorney?

In answer to your first question, I advise that I find no law requiring a Justice of the Peace to consult the Circuit Solicitor before issuing a warrant which the law authorizes a Justice of the Peace to issue.

In answer to your second question, it is my opinion that the summons and complaint in civil cases coming within your jurisdiction cannot be legally prepared by you.

An Act approved September 7, 1927 (General Acts, 1927, p. 669) defines the practice of law, and prohibits any person in the State of Alabama, from engaging in the practice of law, as defined in said Act, without first procuring a license therefor.

In view of said Act, no Justice of the Peace in Alabama, who is not a regularly licensed attorney, can legally charge a fee for writing any mortgage, deed, deed of trust, bill of sale, contract, will or other legal documents or papers.

Opinions of Attorney General, 1927, Vol. 3, p. 149 (Office Edition)
Opinions of Attorney General, 1927, Vol. 3, p. 168 (Office Edition)
Opinions of Attorney General, 1927, Vol. 3, p. 169 (Office Edition)
Opinions of Attorney General, 1927, Vol. 3, p. 193 (Office Edition)

Such fees may not be charged directly or indirectly. However, it should be understood that by this ruling no attempt is made to prevent a Justice of the Peace from charging the fees fixed by law for certain services, i. e., for taking acknowledgments.

Opinions of Attorney General, 1927, Vol. 3, p. 177 (Office Edition)
Opinions of Attorney General, 1927, Vol. 3, p. 190 (Office Edition)
Opinions of Attorney General, 1927, Vol. 3, p. 353 (Office Edition)

Yours truly,

CHARLIE C. McCALL,
Attorney General.

June 28, 1928.

The County Superintendent of Education,
Monroe County, Monroeville, Alabama.

Dear Sir:

Officers—Allowance for traveling expenses when same not included in contract of employment—County Superintendent of Education.

Opinion by Attorney General.

I have your letter of June 25, 1928. You state that on May 15, 1925, you were elected County Superintendent of Education of Monroe County for a term of five years, beginning July 1, 1925 (you state July 1, 1928) and ending September 30, 1930, at a salary of $3,300.00 per annum. I assume also that when you were elected a written contract was entered into in due form and that the only provision for your compensation in any form, was that amount stated by you, **and on this assumption this opinion is based.**

You request my opinion:

"Under the foregoing statement of facts may the County Board of Education pay me an allowance for travel in addition to the salary stated, for the remainder of the term for which I was elected?"

I am of the opinion that such an allowance, under the facts set forth, would be illegal.

You were elected County Superintendent of Education under the law as it existed prior to the adoption of the Alabama School Code of 1927, which law you will find in Section 1 of Article 6 of the Act approved September 26, 1919 (General Acts, 1919, p. 567), carried in the **compilation** of the School Laws of Alabama of **1924**, as Section 114 thereof, which provides:

"The County Board of Education of each county shall appoint during the month of May a superintendent of schools for a term of from two to five years from the first day of July next succeeding his appointment."

There is no doubt a typographical error in your letter in which you state that your term began July 1, **1928**, and ended September 30, 1930. You state that you were elected for a term of five years at a meeting of the County Board held May 15, 1925, and the law is plain as to the time when the County Board shall elect a superintendent. The election **must** be in the month of **May** for a term beginning on the first of July following that month, and the term for which the superintendent is to serve, under the law as it existed at the time of your election was not less than two nor more than five years. This did not mean that the County Board had a right to fix a maximum and minimum in the contract, but simply serves as a limitation of time for which the Board could elect a superintendent and a **definite** time of service had to be decided upon at the election held, as for instance, 2, 3, 4 or 5 years. If your county board elected you on May 15, 1925, for a term of five years, beginning July 1, 1925, under the law, your term ends with June 30, 1930, and the action of the county board in attempting to elect you for a term of more than five years was illegal insofar as the extra

part of the term is concerned, and it is incumbent upon the county board, that, in the month of May, 1930, it elect a superintendent again. This is somewhat beside your question, but, inasmuch as the matter is brought to my attention, I think it best to apprise you of the situation.

When the County Board of Education elected you its superintendent, and entered into a contract with you, which contract sets forth the compensation you were to receive, it is plain that it was the purpose and intent of the county board that you were to take the office for the consideration therein named and no other, and were to perform all of the duties of that office for that compensation. A public officer takes office cum onere, that is, with all of the burdens attached thereto.

The Supreme Court has held, construing the statutes in existence at the time of your appointment, and Section 175 of the Constitution, that a statute providing for the removal of a county superintendent of education from office by electing or appointing a successor during the term of the officers so attempted to be removed, violates Section 175 of the Constitution.

Petree v. McMurray, 210 Ala. 639.

It is evident that since you cannot be removed from office other than as provided by the Constitution; i. e., by impeachment proceedings, the county board of education can neither increase nor diminish your compensation nor make material changes in the terms of your contract during the term for which you were elected or appointed.

Let us assume that in your original contract the county board authorized an expense allowance or a definite amount per month in addition to your salary. If the county board, after the execution of said contract, could grant you further additional allowance, it could likewise reduce the allowance, and thus, practically speaking, remove you from office other than by the method provided by the Constitution, by virtually forcing you to vacate it because of the diminished allowance.

When you took this office you were aware of the duties that devolved upon you as superintendent. You were fully aware of the general and specific services which you were to perform, as provided by law. You were also aware of the consideration which you were to receive, which consideration was $3,300.00 per annum. You assumed the office under the contract stated, and in my judgment, the county board cannot now diminish your compensation or allowance provided in that contract, and equally so, it cannot increase your compensation or grant you additional allowances to make the burdens, of which you had full knowledge in the beginning, lighter upon you to discharge.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1928.

Probate Judge,
Russell County,
Seale, Alabama.
Dear Sir:

1. Notary Public—Qualifications of.
2—Voter—Qualifications of.

Opinion of Assistant Attorney General Rayburn.

I have your letter of June 25, 1928.
You request my opinion:

1. Can a legal resident of Lee County, Alabama, qualify as a Notary Public in Russell County, Alabama?
2. Can a person whose legal residence is in the State of Georgia, but who owns property in the State of Alabama, legally qualify as a Notary Public in the State of Alabama?
3. Is a person a qualified voter who pays all poll tax due by him?

In answer to your first question, I advise you that such a person cannot so qualify.

In answer to your second question, I advise you that a citizen of the State of Georgia cannot legally qualify as a Notary Public, in and for the State of Alabama.

In answer to your third question, I advise you that the payment of poll tax, of itself, does not make a person a legal voter.

The appointment of a person as a Notary Public contemplates resident citizenship; that is, a qualified elector. When a Notary Public moves his legal residence from the county for which he was appointed, he automatically vacates his office as a Notary Public. Section 9240, Code of Alabama, 1923, specifically so provides.

Section 9238, Code of Alabama, 1923.
Biennial Report of Attorney General, 1910-12, p. 22.
Opinion of Attorney General, June 18, 1928, to Hon. John C. Anderson, Mayor, Collinsville, Ala.

Section 364, Code of Alabama, 1923, disqualifies certain persons from registering and voting. Such persons could not become legal voters by paying a poll tax.

A person may have paid all poll tax due by him, and yet not be a legal voter for the reason that he has not registered, or met the other qualifications of a legal voter in the State of Alabama, as set out in Section 361, Code of Alabama, 1923.

Said section is as follows:

"Qualification of Elector to Vote.—Every citizen of this State who is a citizen of the United States, and every resident of foreign birth, who, before the ratification of the present Constitution of the State, shall have legally declared his or her intention to become a citizen of the United States, twenty-one years old or upwards, not laboring under any

of the disabilities named in Section 364 (293) of this Code, and who shall have resided in this State at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector, and shall have paid, on or before the first day of February next preceding the date of the election at which he or she offers to vote, all poll taxes due from them for the year 1901, and for each subsequent year, shall be an elector, and shall be entitled to vote at any election by the people."

See Sections 361 to 369, inclusive, Code of Alabama, 1923.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1928.

The Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Deed Tax.—Construction of Section 21½ of Revenue Act, 1927 (Acts 1927, p. 163) as applied to bill of sale, or instrument in the nature of bill of sale, conveying mortgaged property.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of June 21st, with photostatic copy of an instrument in writing signed by J. A. Pound, et al., attached, is hereby acknowledged. You ask:

1st. Should not the consideration received by the original purchaser be stated in the instrument?

2nd. Should a deed tax be collected on this instrument?

In reply will say that there is no law requiring that the true consideration be stated. What is stated is sufficient to support the conveyance.

A purchaser, in a conditional sale contract for an automobile, who has paid part of the purchase price, stands before the law as does a mortgagor who has mortgaged his automobile. The unpaid balance is secured by retention of the title by the seller. When such a purchaser sells his automobile and executes a written instrument evidencing the sale, such written instrument is a bill of sale, or instrument in the nature of a bill of sale, which conveys the interest of the seller of such automobile, subject to the mortgage, or amount owing secured by the retained title. If the mortgage tax has been paid on the original instrument evidencing the conditional sale contract, then there should be paid for filing this instrument for record only the value in excess of the mortgage. When this is not shown sufficiently by the instrument, the person offering such instrument for record should be required to inform you.

Section 21½ of the Revenue Act, 1927 (Acts 1927, p. 163) has the following provision:

"Provided, that only the value in excess of any mortgage or vendor's lien upon any property within this State on which the mortgage tax has been paid, shall be taxable under this section, etc."

In the mortgage filing tax law, the unpaid part in a conditional sale contract is treated as a mortgage and such doubtless was the legislative intent in the provision in Section 21½ above quoted.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1928.

The County Superintendent of Education,
Wetumpka, Elmore County, Alabama.
Dear Sir:

County Treasurer of School Funds.—Employe in office of county superintendent and county treasurer of school funds being one and the same person. Legal right to such arrangement.

Opinion by the Attorney General.

I have your letter of June 27, 1928. In it you state that the County Board of Education has authorized you to negotiate an agreement with a bank at Wetumpka, whereby said bank is to be made the depository of school funds and the clerk of your office is to be made the county treasurer of school funds. You state that this is being done with a view to relieving the bank of the bookkeeping attendant upon it as treasurer of public school funds.

You request my opinion:

Can the County Board of Education legally appoint an employee in the office of the county superintendent of education, the county treasurer of school funds?

I am of the opinion that such action by your Board of Education would be illegal because contrary to public policy.

A careful reading of Section 94, Sections 295 to 300, inclusive, Sections 462 to 466, inclusive, Sections 382 to 398, inclusive, Alabama School Code, 1927, convinces me that it was the purpose and intent of the Legislature that no such arrangement as you suggest should be made.

Such an arrangement places the county treasurer of school funds under the domination of the county superintendent of education and renders a nullity in large measure, if not entirely as a practical proposition, the check afforded the tax payers of the State and county in keeping the office free and independent on the discharge of its duties.

The County Treasurer of School Funds is selected by the county board of education to serve without pay, paying the premium on his own bond and

has charge of all of the public school funds coming to the county board by taxation, donation and appropriation. He is a check against the county superintendent of education, and, in fact, the county board, and should in nowise be placed under the dominion of the county superintendent of education by being also a clerk in his office or employee of the county board, in which status, if he did not do the bidding of the county superintendent of education, he might be seriously embarrassed in the discharge of his duties. Such a solution as you suggest might easily lead to dire consequences in the handling of public funds and is contrary to our whole system of handling educational affairs in a democratic government, where checks and balances are always maintained.

Any former opinions dealing with this subject and in anywise contrary to this one, are hereby expressly overruled.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1928.

Hon. G. C. Glass,
Chairman, Democratic Executive Committee,
Ashland, Clay County, Alabama.

Dear Sir:

Election Contest.—Members County Democratic Executive Committee not entitled to pay for time consumed in attending.

Opinion by Assistant Attorney General Rayburn.

I have your letter of June 11, 1928.
You request my opinion:

"Are members of a County Democratic Executive Committee entitled to be paid out of the deposit required to be made by a contestant of an election under Section 656, Code of Alabama, 1923, for the time consumed by said members in attending election contests?"

It is my opinion that said members are not entitled to be so paid.

No provision of law is found for such an expenditure. It is a well recognized principle of law, established by a long line of adjudicated cases, that no fee shall be allowed unless an express provision of law provides therefor. Such matters are not left to intendment, surmise or conjecture.

Mobile County v. Williams, 188 Ala. 639.
North Alabama Railroad v. Lowery, 3 App. 511.

Opinions of Attorney General, 1927, Vol. 3, p. 94, (Office Edition).

Section 659, Code of Alabama, 1923, sets forth the legitimate expenditure of said fee provided for in Section 656, Code of Alabama, 1923; that is to say, in the event an appeal is taken by the contestant, the County Democratic Executive Committee may use said fee in furnishing the State Committee

with a "transcript showing a complete record of the proceedings before the county committee in such contest, and also a statement of the substance of the testimony of each witness taken in the trial of the contest before the county committee."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 29, 1928.

Hon. A. R. Honeycutt,
Justice of the Peace,
Corona, Alabama.

Dear Judge:

Billiard Rooms, Clubs organized to conduct.

Opinion by the Attorney General.

I have your letter of June 25th. You state that seven or eight years ago there was a so-called club organized there, which, in reality was simply a pool room, and that on account of trouble at the place a petition was circulated asking Circuit Solicitor to have the place closed. You further state that the party running it was indicted for unlawfully operating a pool room and for allowing minors to play pool. The judge allowed the party to pay a fine and costs and ordered the place closed. Pool playing was discontinued temporarily, but the same party has started up again and now claims to be a social club legally organized for that purpose.

It appears that the club was organized by certain persons getting others to sign the club list and pay $2.50 a month as dues. You direct my attention to Section 4275, Code of Alabama, 1923, and ask for a construction of same in the light of the facts set forth above.

Article 2 of Chapter 147, Code of Alabama, 1923 (pp. 358-363, inclusive) deals with billiard and pool rooms. Section 4255 defines the terms "billiards" and "billiard room." Section 4256 permits the various probate judges to license the operation of billiard rooms in certain places. Section 4257 deals with the application for license and the bond of the applicant. Section 4258 provides when the license shall be surrendered or forfeited. Section 4259 provides an additional regulation as to the manner of the issuance of the license in certain places. Section 4260 makes it the duty of certain officers to inspect billiard rooms. Section 4261 deals with the right of city authorities to fix license and regulate billiard rooms. Section 4262 designates the hours when certain persons shall not be permitted to remain in a billiard room. Section 4263 deals with allowing minors to play billiards, etc. Section 4264 prohibits gambling and the sale of liquor and certain games in billiard rooms. Section 4266 prohibits screens, blinds, etc., in certain parts of billiard rooms. Section 4267 forbids secret doors, connections, etc., in billiard rooms or gambling places. Section 4268 prohibits the operation of a billiard room without a license in certain places. Section 4269 provides that the license and the law as to minors shall be conspicuously posted in billiard rooms. Section 4271

provides a general penalty for violation of the provisions of the article. Section 4272 prohibits gambling devices in billiard rooms. Section 4273 prohibits its issuance of license for operation of billiard rooms prohibited by city ordinance. Section 4274 prohibits betting, etc., in billiard rooms. Section 4276 makes it a misdemeanor for operators, etc., of billiard rooms and pool tables to permit minors to play the games or loiter on the premises.

These are all of the sections of said Article 2, with the exception of 4270 and 4275, which are as follows:

> "4270. EXEMPTIONS FROM ARTICLE.—The provision of this article shall not be construed to include billiard tables or billiard rooms operated by **industrial** concerns for the exclusive use of their employes, Young Men's Christian Association, religious orders, charitable institutions, state, county, or city institutions, fraternal orders, or bona fide clubs **organized** and **chartered** prior to January 1, 1923, using such tables for employes or members only."
>
> "4275. KEEPING OR OPERATING POOL OR BILLIARD TABLES OUTSIDE INCORPORATED CITIES OR TOWNS.—Any person who keeps, operates or exhibits a pool or billiard table on which the public can play, whether for pay or not, outside of an incorporated city or town, having a police force, must, on conviction, be fined not less than fifty nor more than one hundred dollars for each table, and may also be sentenced to hard labor for the county for not less than thirty days nor more than fifty days. But this section shall not apply to clubs conducted by companies which provide welfare work for their employes; nor shall it apply to pool or billiard tables, kept or operated at any military camp of the United States or within one-fourth of a mile of each military camp, nor to pool or billiard tables kept and operated at any nitrate plant or on any land acquired and held by the United States."

You will note that Section 4270 has the effect of exempting from the provisions **of the Article** those billiard **tables** or billiard **rooms** operated by **industrial** concerns for the **exclusive** use of their employes, also the young men's christian association, religious orders, charitable institutions, state, county or city institutions, fraternal orders or bona fide clubs **organized** and **chartered prior** to January 1, 1923, using such tables for employes or members **only.**

The last sentence of Section 4275 exempts **from the provisions of said Section 4275,** clubs conducted by companies which provide welfare work for their employes, pool or billiard tables kept or operated at any military camp in the United States, or within one-fourth of a mile of such military camp, pool or billiard tables kept at any nitrate plant or any land acquired and held by the United States.

From your statement of the facts, it does not appear that the club **was** organized and chartered prior to January 1, 1923, and hence it would not come within the exemptions of Section 4270. I do not think, from your statement of the facts, that it comes within the provisions of Section 4275.

The Article on billiard rooms permits same to be licensed when located within the corporate limits of cities and towns. If Corona is an incorporated

town and anyone wants to operate a billiard room therein, they must comply with Sections 4256, 4259 and 4261 of the Code.

For further information on the subject, I would refer you to the Circuit Solicitor at Jasper.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 30, 1928.

Hon. E. G. Pilcher,
Deputy Solicitor,
Gadsden, Etowah County, Alabama.

Dear Sir:

Slot Machines—"Roscoes"—Outlawed. Sections 4247, 4248, 4249, Code of Alabama, 1923.

Act September 6, 1927 (General Acts, 1927, p. 709).
Opinion by the Attorney General.

I have your letter of June 27th. In it you state that the grand jury of Etowah County, in its report recently made, called the sheriff's attention to what is commonly known as "Roscoe" machines in the county, it being the evident desire of the grand jury that, in doing so, the sheriff of the county might start immediately the arrest of violators of gambling laws in this regard. You invite my attention to the Act approved September 6, 1927 (General Acts, 1927, p. 709), being an Act "to prevent the fraudulent operation of slot machines and coin receptacles, and to provide penalties for the violation thereof," which Act you seem to think would indicate that operators of these slot machines are protected to the extent that a person who puts any device into such a machine for the purpose of defrauding the owner or lessee is subject to fine and imprisonment. You further state that upon examination of the Acts of 1927, you find nothing that would prevent the operation of these slot machines or "Roscoe" machines, and neither do you find anything in the Code of Alabama, 1923, nor the Acts of 1923, that forbids the operation of these machines. You state that upon investigation you find that parties in Gadsden, who are operating these machines, have paid the city, state and county license for their operation, but that you cannot understand why such license would be acceptable when the machine is a violation of the law. You ask that I cite you the law applicable to such cases in order that you and the sheriff may know exactly how to proceed.

There are two sections of the Code of Alabama, 1923, dealing with devices of the kind mentioned by you, viz.: Sections 4247 and 4248 thereof. You will observe that Section 4247 does not specifically mention slot machines, yet a slot machine operated as a device of chance has been held to be a lottery, or a "device of like kind" (see cases cited post). Similarly, though, Section 4248 specifically mentions a slot machine, the courts of this State have held there is no conflict between Sections 4247 and 4248 (See 137 Ala. 101). Neither is it a defense that the owner of the machine had a license

to operate it. (Same case.) And the grand juries have no discretion as to finding indictments for violations of Sections 4247 and 4248 (See Section 4249).

This office has held that Section 4248 of the Code has reference to gambling devices, where there is an element of chance in the operation of the devices. (Opinions Attorney General, 1924-26, p. 154).

Schedule 73 of Section 361 of the Act approved September 15, 1919 (General Acts, 1919, p. 282, et seq.) specifically states that the license therein required does not apply to any device prohibited by law. This office has held that said Schedule permitting and requiring licenses has reference in this regard only to slot machines where there is no element of chance or gambling; where the person who puts his money in the machine gets what he pays for without element of chance connected with it.

(Opinions of Attorney General 1924-26, p. 154).

Where the machine is operated by inserting a nickle therein whereupon the machine puts out a block of mints and at times pays out different amounts of trading checks which amount will show before the nickle is inserted, even though the operator may know each time in advance what he will get in return for his money, the same was held to be in violation of Section 4248 of the Code. (Opinions Attorney General, 1924-26, p. 211; 12 R. C. L. 730; 178 Ind. 568; 42 L. R. A. (N. S.) 720; Ann. Cas. 1915 C. 172; Cayle v. State, 18 Ala. App. 553. It is probable the prosecution could legally have been under Section 4247.

The Act approved September 6, 1927, supra, was intended to apply only to those legitimate devices in which, or by the means of which, gambling was not carried on openly or secretly, and the Act has no bearing on devices of chance. Any other construction of said Act would render it unconstitutional to that extent. (Opinion May 23, 1928, to Circuit Solicitor, Greenville, Alabama.)

Where a slot machine within itself, or by virtue of the method or purpose for which it is used, whether the plan and agreement for its use be open and above board or in secrecy and by secret agreement, is, in fact, a device of chance, a scheme in the nature of a lottery, or a lottery, or any other kind of gambling device of similar type, you may charge those connected with its operation, with a violation of either Section 4247 or 4248 of the Code. (Opinion May 23, 1928, supra.)

A "Roscoe" machine is a lottery and the operation of such is a violation of Section 4247 of the Code.

Johnson v. State, 137 Ala. 101.
Loiseau v. State, 114 Ala. 34.
Reeves v. State, 105 Ala. 120.

Section 65, Constitution of Alabama, 1901, prevents the Legislature from authorizing lotteries.

(See cases cited under said section of the Constitution in the Code.)

In connection with the above I am sending you a copy of the opinion rendered to the Circuit Solicitor dated May 23, 1928.

In an opinion rendered May 14, 1927, to the License Inspector at Gadsden, Alabama, upon his request for advice as to proper steps to take in the collection of a license or prohibiting the operation of slot machines in Etowah County, this office advised:

> "Where a slot machine is being operated, if it has in it an element of chance and constitutes a gambling device, the matter should be reported to the sheriff of the county and to the solicitor of the county or circuit. It will become his duty to see that the parties operating it are prosecuted. There is no license required for such machine. Where a slot machine is operated with no gambling device, but simply for sales purposes, then you proceed to collect the license * * *"

This office did render an opinion at one time that where a slot machine is operated solely as a vending device, in which either openly, or secretly, there is involved no game of chance, or other violation of the gaming and lottery laws, the same is not per se in violation of the law. However, I stated in a later opinion that investigation had convinced me that all of these machines, either openly or in secrecy, were being operated as unlawful gaming devices in violation of Section 4247 of the Code. (Opinion May 31, 1927, to Judge of Probate, Dadeville, Alabama.)

In this last opinion cited, I stated:

> "I have found from investigation that there is a certain type of slot machine in operation in this State, which, when a nickle is put into the slot and a lever is pulled, three cylinders revolve, and, upon turning a knob, the machine will dispense a nickle's worth of mints and at the same time **may** release some metal slugs marked 'no cash value.' Officers are told that these slugs are for amusement only and cannot be redeemed in cash or in merchandise. The truth is, that the slugs are worth five cents apiece, and are redeemed in cash or merchandise under a sub-rosa agreement."

I held this machine, when so operated, to be in violation of Section 4247 of the Code, in the light of the Alabama decisions heretofore cited.

In another opinion, I held:

> "The fact that the slugs bear the statement on them that they are not redeemable or of no cash value is immaterial, if in fact they are redeemed or are redeemable."
>
> (Opinion January 21, 1928, to Sheriff of Escambia County.)

In the same opinion I held that a case may be made against the person who **sets the machine up** in the place for operation, **also** the person **in whose place** of business it is **carried on; also** the person who actually operates it or pulls the handle. In the same opinion it was likewise held that a license would not protect the licensee in the operation of the machine as a gaming device. Also in that opinion I held that where a machine is being unlawfully operated, it is the duty of the peace officer to arrest the parties interested therein, seize the machine and hold it **for evidence pending** the disposition of the case, and if the party claims the machine is a lawful one and has no li-

cense for its operation, a charge may be made against him for violating the revenue law in that regard. I state there that I found no provision of law for confiscating and destroying such machines. However, this has not been definitely determined by our higher courts.

(See Opinion February 10, 1928, to Sheriff of Henry County; see also opinion September 29, 1927, to License Inspector, Montgomery County; see also opinion March 8, 1928, to Chief Examiner of Accounts.)

The Act approved September 6, 1927, supra, to which you referred in your letter, applies only to those devices which, both openly and in secrecy, are **not** operated in violation of gaming and gambling laws of the State. It was never the intent of the Legisuature in any wise to protect the notorious "Roscoe" devices in any manner and the law upon which you are to operate in prosecuting offenders is carried in Section 4247 and 4248 of the Code.

I am aware of the fact that in Etowah County a number of slot machines are in operation as follows: The machine has three cylinders which revolve; it has a handle on the side; it has a slot in which to place a coin or slug. When the coin is placed in the slot and the handle is pulled the wheels revolve and finally come to a stop and the combination of cards or signals pictured on the cylinders designates the number of slugs dispensed which then fall into a receptacle. At the same time, by turning a knob, the person who has pulled the handle receives a package of mints or confections, presumably of the value of the coin placed in the machine. The slugs which have been dispensed on the combination often times have printed on them "For Amusement Only" or "No Cash Value." Though these statements are printed on the slugs, investigation discloses that in the vast majority of cases, either openly or in secrecy or by sub-rosa agreement, the slugs are in fact redeemed in cash or in merchandise. Such a machine is but a crude and obvious subterfuge to circumvent the plain inhibitions of the lottery laws of Alabama, and all parties concerned in setting them up, carrying them on and in their operation, when the facts are presented as hereinabove stated, should be vigorously prosecuted.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 30, 1928.

The Commissioner,
Department of Insurance,
Capitol.
Dear Sir:

Workman's Compensation.—The State is not an employer within the terms of the Act.

Opinion by Special Assistant Attorney General Smith.

I have your letter of June 11, 1928. You state that the Extension Bureau of the Alabama Polytechnic Institute is desirous of applying the Workman's Compensation Law to their employees.

You request my opinion:

"Can the Workman's Compensation Law be made applicable to the employees of the State of Alabama?"

I am of the opinion that there is no law which requires or permits the State to take out employers' liability insurance for the protection of its employees.

Aside from the doubtful validity of such a law, the Workmen's Compensation Act (Acts 1919, p. 206) indicates clearly that the State, nor any political subdivision thereof was intended to be included within the meaning of the term "employer" as used in this Act. Section 8 of this Act provides in part as follows:

"This Act shall not be construed or held to apply to any common carrier (doing an interstate business) while engaged in interstate commerce, or to domestic servants, farm laborers, or to any county, city, town, village or school district."

Section 30 permits every employer who accepts the provisions of this Act to take out employer's liability insurance.

Section 36 (d) defines "employer:"

"The term 'employer' as used herein shall mean every person not excluded by Section 8 who employs another person to perform a service for hire, and to whom the employer directly pays wages, and shall include any person or corporation, co-partnership, or association or group thereof, etc."

It is clearly the purpose of this law to afford employees a simple and adequate remedy for the collection of compensation for injuries received by them while engaged in their work. As to the employer, it substitutes one liability for another. As the State cannot be sued without its consent, and as no liability has ever existed against the State on account of any injuries suffered by its employees, I am sure that the State is not an employer within the meaning of the Act.

See Constitution, 1901, Section 14.
Comer v. Bankhead, 70 Ala. 492.
White v. Alabama Insane Hospital, 138 Ala. 479.
Attorney General's Report, 1920-22, p. 61.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

June 30, 1928.

Judge of Probate,
Moulton, Lawrence County, Alabama.

Dear Sir:

Gasoline Tax Fund.—Counties not authorized to create indebtedness against gasoline fund.

Opinion by Assistant Attorney General Brassell.

I have your letter of May 30, 1928, in which you desire to be advised concerning the creation of indebtedness against the gasoline fund.

You request my opinion:

> Can indebtedness against the gasoline fund provided by the Act approved August 27, 1927 (General Acts, 1927, p. 328) be figured in the amount of indebtedness allowed by law?

I assume that you mean the three and one-half (3½) per cent mentioned in Section 224 of the Constitution, and upon that assumption this opinion is based.

In answer to your question, I am of the opinion that no indebtedness can be created by the counties against the proceeds of the gasoline tax fund provided by the Act approved August 27, 1927 (General Acts, 1927, p. 328, Section 9).

Opinion of Attorney General, January 6, 1928, Book 4.

The pertinent part of Section 9 of the Act approved August 27, 1927 (General Acts, 1927, p. 328) is as follows:

> "* * * provided, however, that all the funds derived by the several counties from said tax **shall be expended exclusively** for maintenance and repair of roads, highways and bridges in said county. The use or expenditure of any of said funds in any other manner or for any other purpose than as provided herein, by the governing body of any county or any individual member of said board, shall constitute a misdemeanor punishable by a fine * * *."

It is very evident that the Legislature intended that the amount of money derived from the gasoline tax fund should be used exclusively for the purposes mentioned in the quoted part of said section, and it was not the intention of the Legislature that the county could, or should create any indebtedness against said fund.

In construing the act, supra, it was said:

> "I must state that the courts of county commissioners have only such authority, or may have been granted such authority by statute. I find no provision of statute authorizing the issuance of bonds by the Court of County Commissioners against the gasoline tax fund * * *."

Opinion of Attorney General, January 6, 1928, supra.

In the case of Gunter vs. Hackworth, 182 Ala. 205, the court said:

"The indebtedness of Jackson County exceeds the limitation fixed by Section 224 of the Constitution, and that the county could not incur any further indebtedness * * *."

The prohibition against indebtedness under Section 224 of the Constitution is generally construed to apply to indebtedness in all forms, however incurred or for whatever purpose. The obvious intent of Section 224, supra, is to restrain counties from obtaining money either upon the general credit of the county, or by pledge or transfer of its revenue or assets, thereby creating a debt and imposing additional burdens upon the citizens, which, whether directly or indirectly, involve increased taxation. And the requirement is that, whenever a county has reached the constitutional limitation, it must at once adopt the financial policy of paying as it goes.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 2, 1928.

The President, Board of Revenue,
Columbiana, Shelby County, Alabama.

Dear Sir:

Miss Louise Montebaro.—Fees of Dr. Lawrence for alleged services before death of the young lady.

Opinion by the Attorney General.

I have your letter of February 20, 1928, and also June 11, 1928. You state that Dr. Lawrence of Calera, Alabama, attended Miss Louise Montebaro at Calera in the office of said doctor on the night of November 14, 1927, and that he dressed her wounds and later carried her to an infirmary in Birmingham, at which place she died several hours later.

You refer to the opinion rendered by this office on February 24, 1928, to the effect that for the services of such doctor, under statutes mentioned in said letter, he was entitled to the payment of $5.00 and ten cents per mile for each mile traveled. You invite attention to the fact that Dr. Lawrence takes issue with this opinion, and you refer to his letter, a copy of which you enclose, and particularly that part in which he states, "May I respectfully suggest that Mr. McCall is mistaken in his opinion for the simple reason that Miss Montebaro was not dead at the time my services were rendered."

The opinion referred to above, written by Assistant Attorney General Brassell, was based upon his idea that Miss Montebaro was dead at time of the doctor's services at Calera, and no doubt was written with that view in mind.

From the facts as now presented, I gather that it is your desire that the matter be reconsidered.

You request my opinion:

"Where the patient is not dead and a 'coroner's inquest' is held over

said patient and a physician is summoned, may said physician be paid his claim of $35.00 for attendance thereat?"

In my judgment he cannot be so paid.

There is no provision for paying a physician who merely answers a call to attend a patient who has been wounded. There could be no legal "coroner's inquest" in such a case.

Your attention is invited to that portion of Section 4557, Code of Alabama, 1923, which is as follows:

> "When a coroner has been informed that a person **has been killed,** or **suddenly died** under such circumstances as to afford a reasonable ground for belief that such death has been occasioned by the act of another by unlawful means * * *"

Also I invite your attention to Section 4559, Code of Alabama, 1923, as amended by the Act approved September 9, 1927 (General Acts, 1927, p. 497) and to Section 4569, Code of Alabama, 1923, as amended by the Act approved September 9, 1927 (General Acts, 1927, p. 497, which are as follows:

> "4559. Witnesses and surgeons summoned. The coroner may issue subpoenas for witnesses returnable forthwith, or at such time and place as he may appoint; he must summon and examine as a witness any person who in his opinion or that of any of the jury, has any knowledge of the facts; he may also summon as a witness a surgeon or physician who must, in the presence of the jury, inspect the **body,** and give a professional opinion as to the **cause of death;** when a coroner has been informed that a person is **dead** in the county, and that said person died without being attended or examined by a legally qualified physician, the coroner shall forthwith proceed to the place where the **dead** person is lying, and examine the dead body to ascertain the **cause** of **death** and report same in the same manner as inquests are reported; when the coroner is unable to determine the cause of **death,** he may summon any physician or surgeon, who shall make an external **post-mortem** examination of the **dead** body, and report his opinion of the cause of death to the coroner in writing; if the surgeon or physician is unable to determine the cause of **death** from an external post-mortem examination, and the coroner has reasonable cause to believe that deceased came to his or her **death** by unlawful means, the coroner in such cases may order any physician or surgeon to perform an **autopsy** or internal examination on the **dead** body, and report the findings of said **autopsy** to the coroner in writing."
>
> "4569. Compensation of surgeons and physicians. Any surgeon or physician who, being duly summoned by the coroner, makes a **post-mortem** examination and gives a professional opinion **thereon,** is entitled to receive five dollars, with an additional fee of ten cents for each mile he may be compelled to travel to make **said examination,** and said fee shall be paid out of the county treasury upon certificate of the coroner, certifying that such services have been rendered; when any physician or surgeon is summoned by the coroner to perform an autopsy or internal examination, the physician or surgeon performing said autopsy or **internal**

examination, shall be entitled to receive the sum of twenty-five dollars, to be paid out of the county treasury upon certificates of the coroner that such service has been rendered; when an **autopsy** or **internal** examination has been performed, the physician or surgeon shall not be paid the five dollars, as provided for an external post-mortem examination but the sum of twenty-five dollars herein provided for shall be the entire amount received for such service. Provided, that if the estate of the deceased is solvent the amount herein paid by the county shall be recovered from the estate of the deceased."

Again it may be contended that Dr. Lawrence could collect this bill under Section 4808 of the Code of Alabama, 1923, which is as follows:

"4808. Necessary clothing, medicines, etc., to insolvent prisoners.—Necessary clothing and bedding must be furnished by the sheriff or jailer, at the expense of the county, to those prisoners who are **unable to provide them for themselves;** and also necessary medicines and medical attention to those who are sick, **when they are unable to provide them for themselves."**

This statute has been codified and appears in all the Codes since 1886. The plain intent of the Legislature was to require the furnishing of medicine and medical attention only to those persons confined in jail. A mere jailer would not be in charge of a person just arrested eleven miles from the county jail. The views expressed above are sustained by the courts.

Malone v. Escambia County, 116 Ala. 214.

Justice Harrison in rendering the opinion of the court in the case above cited, said in part:

"* * * When a suit is brought under either of said sections, the complaint should show that the services were rendered or medicines furnished to a prisoner **in jail, and that he was unable to provide such services and medicines for himself, or was in a destitute condition.** Without such averment, it would not appear that it contained any cause of action against the county."

The opinion of Mr. Brassell, dated February 24th, 1928, supra, is limited to those instances where the patient is actually **dead** at the time the inquest is held. It can have no application to the case such as that mentioned by you, and as the facts are now understood. The professional services rendered by Dr. Lawrence to Miss Montebaro before she died and without being confined in jail, would be a debt against her estate.

Now the foregoing opinion of this office has been written in the light of and considering it to be a fact that Henry F. Blake and W. D. Farmer, alleged peace officers, lawfully arrested Miss Louise Montebaro on the evening of November 14, 1927. This office is aware of the fact that Henry F. Blake, in his testimony on his trial for the murder of this young lady stated in substance that he told Miss Montebaro she was under arrest when he stopped her. This office is likewise aware of the fact that, according to the testimony of experts, whose ability in the particular line of their profes-

sion is highly recognized throughout the State, the blood and hair that was found on the highway at the point where Blake and Farmer admitted they stopped Miss Louise Montebaro's car, was her blood and her hair. This office is also aware of the fact that this blood and hair was taken from that point on November 20, 1927, after having been seen there in the form of pools of blood within a few hours after the death of Louise Montebaro. This office is further aware of the fact that there was testimony to the effect that, instead of Blake and Farmer pursuing this young lady on the night of the fatal shooting, for the purpose of arresting her, they pursued her after Blake and Farmer had engaged in a conversation with each other, the substance of which was, not that they were going to pursue her for the purpose of making an arrest, but according to the testimony in substance:

Blake to Farmer:
"Do you reckon a man could ....?"
Farmer to Blake::
"I don't know. We will give it a damn good trial."

This office likewise is aware of the fact that apparently by the testimony in the trial of Blake, no effort was made by Blake or Farmer to arrest this young lady while she was within the corporate limits of Calera, though the testimony indicated that they strongly suspicioned her as a law violator.

A young, single, white woman, about twenty-two years of age, employed by the Singer Sewing Machine Company of Selma, Dallas County, Alabama, as a saleswoman, an unprotected girl who had to work for a living, left her home and duties in Dallas County, Alabama, about 3:00 p. m. on the afternoon of November 14, 1927, in her Star coupe automobile, in a sober condition, for the purpose of going to Birmingham, via Calera, Alabama, to pay a monthly installment on her car, which was due that day as evidenced by a notice to that effect later found in her possession. When she left home she carried with her, her grip containing some of her belongings in which she placed some sixty-odd dollars in currency. The grip was locked and placed in the rear compartment of her automobile which was locked. She also carried a 32 Savage automatic pistol containing nine cartridges. She also carried a few extra dollars of currency in the pocket of her sport coat which she wore. When she reached Calera about 5:30 p. m. the same afternoon, she was seen on the streets of that town by several different persons all of whom thought her to be perfectly sober. Farmer and Blake saw her there. They had a conversation about her. Farmer and Blake were town peace officers, and claimed to be deputy sheriffs as well. Miss Montebaro, after visiting a girl friend there for a few minutes, left Calera on her way to Birmingham. Farmer and Blake, on a motorcycle, pursued her several miles beyond the corporate limits of the town. They claimed that she was exceeding the speed limit after leaving the city. Blake claimed he fired one shot as an "attraction shot," shortly before Miss Montebaro's car was halted by the alleged officers concerned. There was evidence to the effect that more shots were fired by the riders of the motorcycle, one alleged to have been fired just as Miss Montebaro's car was slowing down, and just before it stopped. Reliable parties stated they actually saw the flash of the pistol fire in the evening at the time and place where the car was halted. Blake stated that after he and

Farmer halted Miss Montebaro, who was in her car alone, they dismounted from their motorcycle and questioned her concerning her speed. They claimed that she had thrown out a bottle of intoxicating liquor some three or four hundred yards before halting her car. Blake further claimed that later he got into the car with Miss Montebaro, took the wheel, came back down the road near a place owned by Judge Riddle, stopped the car practically opposite said place, and that here Miss Montebaro committed suicide, not with a Savage Automatic pistol such as she had when she left home, but with a Remington Automatic pistol, differently loaded from that stated above, and that Farmer was standing in the road mopping up the contents of the bottle she had broken. Blake and Farmer claim that Miss Montebaro was under the influence of liquor. The State chemist who analyzed the contents of her stomach found no evidence of alcohol in it. Several high-class technicians, skilled in the particular line of work, including particularly the undertaker in Birmingham, were of the opinion definitely that no powder burns were on Miss Montebaro's body. One gentleman, who had immediately communicated his findings to the above mentioned Judge of Probate, was inclined to believe differently. Autopsies were performed on Miss Monteabaro's body, disclosing wounds on her head and hand inflicted shortly before death. Blood and hair were found strewn along the roadway at the point where Blake and Farmer claimed they halted her, which blood and hair, high-class technicians were of the opinion definitely, were the blood and hair of this girl. After Blake and Farmer brought the young lady, fatally wounded, back to Calera to Dr. Lawrence's office, the money which was alleged to have been in her suit case in her car when she left home could not be found. Mr. Blake was aware of the fact, regardless of when the fatal shot was fired, that when it was fired, Miss Monteabaro in **fact** and for all practical purposes ceased to be a "prisoner" in his hands, if, perchance it was ever his intention that she should be, because he knew that it was but a question of minutes before she would die. Dr. Lawrence did not probe the wound and did not attempt to relieve any suffering, for he knew that Miss Moneabaro was unconscious and **dying.** He knew full well that the only function that he was performing was to stop the flow of blood, bandage the wounds and fit her for the undertaker and he did this at the behest of Blake and Farmer, in the first place, and remained about his office thereafter to await the silly episode of participating in a supposed coroner's inquest over the body of the woman not yet dead. I am told that considerable discussion then and there issued as to whether or not the county could legally stand the expense of removing this young lady to Birmingham while still alive.

I have no doubt but that the Board of Revenue has presented the facts only to the limited extent that it has, in a perfectly bona fide way, but the fact remains that, regardless of the outcome of the criminal prosecution against Mr. Blake, the death of this young lady and the facts and circumstances surrounding the whole affair can cast no dirtier blot on the record of Shelby County for law enforcement. Shelby County citizens, as a whole, are not responsible. The people of Alabama well know where the responsibility lies.

Having investigated this case from start to finish and incidentally Dr.

Lawrence himself and his connection therewith, I believe that I am in a fair position to know the actual facts.

As stated hereinabove this opinion is based solely on the facts as presented by you and, the only reason for my digression is because I know the full facts were not presented in the letter of request. This is no fault of the Board of Revenue.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 2, 1928.

The Judge of Probate,
Russellville, Franklin County, Alabama.
Dear Sir:

License Tax—Spectacles and Eye Glasses.

Section 12, Act approved July 22, 1927 (General Acts, 1927, p. 155), construed.

Opinion by the Attorney General.

I have your letter of November 21, 1927. In it you invite attention to Section 12 of the Act approved July 22, 1927 (General Acts, 1927, p. 155), relating to license tax for practice of the profession of oculist, optometrist or optician, and for sale or dispensing of spectacles or eye-glasses in certain places by persons, firms or corporations.

You request my opinion::

1. Are jewelry and drug stores required to pay the license provided by said section, where they carry spectacles as a part of their stock of merchandise?

2. Do the terms, "Person, firm or corporation" in said section have reference to persons, firms or corporations generally, or merely to opticians?

In answer to your first question, I am of the opinion that Section 12 of said Act applies to jewelry and drug stores as set forth in your question, and they are not exempt from license for selling and dispensing spectacles or eye glasses.

In answer to your second question, I am of the opinion that the expressions, "Person, firm or corporation," as used in Section 12 of said Act, refer to persons, firms and corporations generally without regard to whether or not persons, firms or corporations are engaged in the business of oculists, and any exemptions granted are to those of the professions named for the practice of the profession, it not being the intent to exempt any persons, firm or corporation from the license for selling and dispensing spectacles and eye-glasses.

Section 12 of the Act approved July 22, 1927, supra, is as follows:

"OCULISTS. Each oculist, optometrist or optician **practicing his**

or her profession or any person, firm or corporation selling or dispensing spectacles or eye-glasses in any form in cities or towns of over five thousand inhabitants shall pay an annual license of twenty-five dollars ($25.00); in cities or towns of less than five thousand and more than one thousand inhabitants, Ten dollars ($10.00); in all other incorporated towns five dollars ($5.00), but no license shall be paid to the county. If each business is conducted as a firm, or as a corporation, in which more than one person is engaged each oculist, optometrist, or optician engaged shall pay the license as above stated; provided that the license imposed by this section shall not apply until such oculist, optometrist or optician shall have practiced his or her **profession** as long as two years."

You will observe that, by the terms of said section, oculists, optometrists and opticians are exempt from the license for practicing their respective professions for a period of two years from the time such persons began the practice of the profession named, in which engaged.

In my judgment, this exemption was intended to apply to individuals in their **professional** capacities. The section mentioned imposes a license for two separate activities, viz.: first, a license for the **practice** of the professions specified, and, second, a license on persons, firms and corporations for the **sale or dispensing** of spectacles or eye-glasses. An oculist is a person skilled in the treatment of diseases of the eye, and makes optical instruments, and also applies to a person who fits glasses for the eye. An optometrist is one who fits glasses to the eye, and who is familiar with the science of optics. An optician, as the expression is here used, refers to one skilled in the science of optics, and who fits glasses for the eye, and is, in my judgment, practically synonymous with the word "optometrist" as used in said section, and cannot be so construed as to exempt such persons from the license tax imposed for the sale or dispensing of spectacles or eye-glasses An oculist, optometrist or optician may practice his profession and yet not sell spectacles or eye-glasses.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 3, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Montgomery, Alabama.

Dear Sir:

Corporations—domestic—charter fees—basis of computation.

Opinion of the Attorney General.

I have your letter of May 9, 1928. In it you state that as a result of an examination of the office of the Judge of Probate, Greene County, Alabama, conducted by an Assistant Examiner of Accounts in your department, it has been found that the charter fees on certain domestic corporations were collected on the paid-up capital stock instead of the proposed or authorized capi-

tal stock. You further state that examiners of accounts and probate judges generally throughout the State have been under the impression that charter fees on domestic corporations are to be collected on the basis of the authorized or proposed capital stock, and not on the paid-up capital stock.

Upon this statement of facts you request my opinion as to what is the proper basis for computing such charter fees of domestic corporations.

I am of the opinion that such charter fees should be based on the proposed or authorized capital stock, but in no case less than $5.00.

Your attention is invited to Section 6969, Code of Alabama, 1923, which reads:

> "6969. Charter fees, amounts and how paid.—At the time the certificate is filed in the office of the Judge of Probate, the incorporators shall pay to the Probate Judge for the use of the State, one dollar for every one thousand dollars of the **proposed capital stock,** but in no case less than five dollars."

You will note particularly that portion of said section which I have underscored.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 5, 1928.

The County Solicitor,
Ashland, Clay County, Alabama.
Dear Sir:

License—privilege for operation of boarding houses where transients are served.

Opinion by the Attorney General.

I have your letter of June 15, 1928.
You request my opinion:

1. Are private boarding houses in cities and towns, serving meals not only to their regular boarders but also to transients, liable for license under Schedule 92, Act approved September 15, 1919 (General Acts, 1919, p. 429)?

2. Are private boarding houses, as described in the preceding question, serving meals to their regular boarders, but not to transients, liable for license under the schedule above cited?

It is my opinion that the proprietors or operators of boarding houses, who in addition to taking in regular boarders, serve meals to transients, are legally subject to a privilege license for conducting a public eating house, by virtue of Schedule 92 of Section 361 of an Act approved September 15, 1919 (General Acts, 1919, p. 429), which provides as follows:

"For each restaurant, cafe, lunch counter, or **public eating house**

where meals, food or refreshments are served and charged for: In cities and towns of over thirty-five thousand inhabitants, where the capital invested does not exceed two hundred and fifty dollars, ten dollars, exceeding two hundred and fifty dollars, and not exceeding one thousand dollars, twenty dollars; exceeding one thousand dollars, fifty dollars. In cities of four thousand and not exceeding thirty-five thousand inhabitants, where the capital invested does not exceed two hundred and forty dollars, ten dollars; where the capital invested exceeds two hundred and forty dollars, ten dollars; where the capital invested exceeds two hundred and fifty dollars, fifteen dollars. In towns of five hundred inhabitants and less than four thousand inhabitants, five dollars."

A "public eating house" as the expression is used in said Schedule, is open to general use, wherein people are fed and charged therefor. The number of the general public eating at such a house is not material to this inquiry.

See also Section 13, Act approved July 22, 1927 (General Acts, 1927, p. 155), which is a separate and distinct privilege tax for conducting a rooming house.

I am of the opinion that a private boarding house serving seals only to the regular boarders thereat is not a public eating house within the terms of said Schedule 92, supra. It is not open to the general public, but simply to a selected few.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 5, 1928.

The County Superintendent of Education,
Athens, Limestone County, Alabama.

Dear Sir:

Taxes—Special Three-Mill School—Legal limitation of use of.

Opinion by the Attorney General.

I have your letter of June 30, 1928. You did not state the facts upon which you requested your opinion (Section 870, Code of Alabama, 1923). However, it is my interpretation of your letter that your county board of education is seeking to use the special three-mill district tax of a particular school district or districts for the purpose of paying the salaries of teachers throughout the county regardless of school district tax laws.

You request my opinion:

"May a county board of education use the special three-mill district school tax of a particular district or districts in paying the salaries of teachers in all parts of the county?"

I am of the opinion that such use of such tax would be clearly unconstitutional, and that you would be liable on your official bond for ordering the

disbursement of district school taxes for payment of salaries of teachers teaching the schools in other parts of the county than the district in which the tax is levied and collected.

Amendment No. 3 of the Constitution of 1901 (Code of Alabama, 1923, p. 429) provides:

> "The funds arising from the special school taxes levied in any district which votes the same independently of the county shall be expended for the **exclusive benefit** of the **district, as the law may direct.**"

Section 289, Alabama School Code, 1927, provides in part:

> "289. Use of District Fund.—All funds arising from levying the special tax for school purposes in any school district under the jurisdiction of the county board of education shall be used for the **exclusive benefit** of the public schools of such district; * * *"

The limitation of the tax amendment, supra, as to the use to which the district tax may be put, no doubt contemplated an enabling Act to effectuate completely the expression "exclusive benefit of the district," by reason of the fact that this expression is followed by the phrase "as the law may direct." Section 289, School Code, supra, is much stricter in the exclusiveness of the use, in that, by that enabling act, the legislature has not only limited the use of the district tax to those matters which are for the exclusive benefit of the school district, but also has confined the use of the tax to those matters which are for the exclusive benefit of the **public schools** of the district. If the enabling Act had been as broad as the amendment mentioned, there is a probability that the district tax could have been used for many purposes which were for the benefit of the school district, and not necessarily for the benefit of the public schools of that district, but, as stated above, the legislature by this enabling Act (Section 289, supra), has confined the use of the tax to narrower limitations than those specifically set forth in the amendment.

In view of the above, it is clear, and it is my judgment and opinion, that where a special three-mill district tax has been levied and collected in a particular district, it can be used for no other purposes than for the benefit of those public schools located or to be located in such district. Paying the salary of teachers in whole or in parts, for services rendered in teaching school in another district than the tax district, whether adjoining or not, cannot be said to be disbursement of those funds for the exclusive benefit of the public schools of the tax district, the taxes of which are used for such disbursements, and such a disbursement would be clearly illegal and you would be liable upon your official bond for same.

I might say, in passing, also, that it is clearly the law, in my judgment, in view of the amendment and the enabling act mentioned, that a public school within the contemplation of Section 289, School Code, supra, is the aggregation of pupils legally entitled to attend, presided over by the duly appointed employees of the board. In order to constitute a public school it is not necessary that this unit be housed in a building of any sort, but a school is not just a fraction of the pupils in attendance who come from a particular section. There was a ruling rendered by Assistant Attorney General Faulkner in the administration of my predecessor, to the effect that the

special three mill district tax, of a district could be used in paying the expense of transporting certain of the children of the tax district to a school in an adjoining district or another district. This opinion overlooked the limitation of Section 289, supra, which, as stated above, is a stricter limitation than that limitation in the amendment, and that opinion is clearly erroneous and is hereby specifically overruled. Pay for transporting children of a school tax district to a school in another school district to attend school there, might possibly be for the benefit of the tax district from which they were transported but certainly would not be for the **exclusive benefit** of the **public schools of** the tax district concerned.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 10, 1928.

Superintendent of Insurance,
Capitol,
Montgomery, Alabama.
Dear Sir:

Construction of Statute; Section 8433 of the Code in light of its constitutionality. Not violative of Sections 45 or 232, Constitution, 1901.

Opinion of Assistant Attorney General Knight.

I have your letter of May 12th, in which you inquire as to the validity of Section 8433 of the Code of 1923, which section provides the requirements for and authorizes foreign mutual insurance companies incorporated or unincorporated to transact business in this State.

I am of the opinion that the section of the Code to which you refer is a valid enactment of this State, inviting your particular attention to a consideration of the above mentioned section of the Code in light of Sections 45 and 232 of the Constitution of 1901.

Prior to the adoption by the Legislature of the provisions embodied in this section of the Code of 1923, Section 14 of the Acts of 1919, page 678, was invalid in that the title of the Act did not authorize unincorporated mutual insurance companies organized outside of the State to do business and the body of the Act did authorize such unincorporated companies as well as incorporated companies to do business in this State. Hence the Act was violative of Section 45. However, the adoption of this matter by the Legislature in the general Code presents a valid legislative enactment and the Act is of full force and effect.

Gibson v. State, 214 Ala. 38.

A former opinion of the Attorney General indicated that Section 14 of the Act was invalid in that it ignored and was in conflict with Section 232 of the Constitution. This section of the organic law provides that any foreign corporation must file with the Secretary of State a certified copy of its articles of incorporation or association.

Report, Attorney General, 1918-20, p. 587.

It is very obvious that Section 232 of the Constitution is self-executing.

Western Union Telegraph Co. case, 67 Ala. 26.

Therefore, in so long as a provision of the Legislature neither by necessary implication or expressly evades the Constitution, a self-executing constitutional requirement is written into the legislative enactment.

However, it will be noted that Section 232 of the Constitution cannot be said to have reference to any but foreign **incorporated companies.** For the reason that the very word incorporated is used therein and, from that standpoint, the Constitutional provision did not effect legislative action in respect to unincorporated concerns. Moreover a consideration of Section 14 of the Acts of 1919, as adopted in the Code discloses that as a requirement or a condition precedent to the authorization of an unincorporated or incorporated foreign mutual insurance company to do business in this State it must have **"complied with other provisions of law** applicable to the filing of papers and furnishing information by stock companies on application for authority to transact the same kind of insurance." Had Section 232 of the Constitution of 1901 been construed as effecting unincorporated concerns the provisions of this section of the Constitution are by the very word of the Act in question required to be complied with. It must be borne in mind that self-executing constitutional requirements are the law as much so as the statutes. However, I do not conceive that Section 232 could have possible reference to foreign **unincorporated concerns.**

I know of no other question which could be raised as to the constitutionality of this Act and it is, as has been above indicated, valid.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 11, 1928.

Hon. John A. Rogers, Member,
Board of Trustees,
Alabama Polytechnic Institute,
Gainesville, Alabama.

Dear Sir:

1. Group Insurance of professors and teachers of Alabama Polytechnic Institute for their benefit; premium to be **paid out** of funds of institute.

2. Insurance of life of Dr. Knapp, President-elect of Alabama Polytechnic Institute, for benefit of said institute, premium to be paid out of funds of institute.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of April 11th is acknowledged. You wish an opinion from this office upon the following questions:

1. Has the Board of Trustees of the Alabama Polytechnic Institute authority to insure, by group insurance, the lives of the teachers and professors of said institute, for the benefit of the estate of each or for those having an insurable interest in such life?

2. Has the Board of Trustees of said institute authority to insure the life of the President-elect of said institute, making said institute the beneficiary, and paying premiums out of the funds of said institute?

In reply will say that we know of no precedent for either of such expenditures. While several briefs have been filed, none of them cite any case where a governmental instrumentality, such as is the Alabama Polytechnic Institute, was a party. The funds of this institution are largely, if not entirely, in a legal sense, the proceeds of taxes exacted of the people.

Being without precedent, we must consider each of the questions from the standpoint of first impression.

In answer to the first question above stated, will say that such an expenditure is permissible and authorized. While the Board of Trustees would be without authority to give away the funds of the institute, even though they have more than is needed for current purposes, I can see no reason why the board may not, as part of the compensation to professors and teachers, agree to keep the life of each such professor or teacher insured for a given amount to be named by the board, payable at death, while in the service of the institute, under contract, to the estate of such professor teacher or to someone suggested by him, having an insurable interest in the life of such professor or teacher. Under such contract, in contemplation of law, the payment of the premium would, in effect, be a payment by the professor or teacher, as the money so paid would constitute part of his compensation. This could be done by group insurance or individual insurance. Such authority is given by Section 524 of the School Code, 1927. This section reads as follows:

"The Board of Trustees has the power to organize the institute by appointing a corps of instructors, who shall be styled the faculty of the institute, and such other instructors and officers as the interest of the institute may require; and to remove any such instructors or other officers, and to fix their salaries or compensation, and increase or reduce the same at their discretion, to regulate, alter or modify the government of the institute as they deem advisable; to prescribe courses of instruction, rates of tuition and fees; to confer such academic and honorary degrees as are usually conferred by institutions of similar character, and do whatever else they may deem best for promoting the interest of the institution."

The foregoing certainly gives the board full authority with reference to what compensation shall be allowed professors and teachers and this would cover the question of premium on insurance for their benefit as part of such compensation.

The answer to your second question is more difficult. There being no precedent judicial decision for basis of opinion upon this question, this is necessarily an opinion of first impression. As an opinon of first impression, many matters demand consideration. Some of which we shall now undertake.

It is true that private corporations have insured their presidents, and, probably other officials and such insurance has been, at times, upheld by the courts upon the theory that such corporations had an insurable interest in the life of such officer, in the particular case. The idea seems to have started with rather extraordinary cases and then to have been extended to less extraordinary cases. But we find no case, even with private corporations, where the determination of insurable interest was not based on previous successful administration of such office by such officer. Nowhere has there been an implied insurable interest arising out of the mere contractural relationship. As said in the case of United Security Life Insurance, etc., Co. v. Brown, 270 Pennsylvania State Reports, p. 270:

> "1. There is no implied interest in the life of an employee justifying the issuance of a policy for the benefit of an employer.
>
> "2. To sustain such a contract, it must further appear that there is a real concern in the life of the party named, whose death would be the cause of substantial loss to those who are named as beneficiaries. This does not follow the cessation of ordinary service, but arises where the success of the business is dependent on the continued life of the employee."

So, it seems, that even in the case of a private corporation the value of the services of the particular officer above what one has a right to expect of one so situated must first be demonstrated. We do not consider a private corporation, defendant on money profits out of its operations as on a parity with a governmental instrumentality supported by taxation of the people and their property. We may agree that, in a particular case, the success of a private corporation—its ability to pay its debts, to obtain the necessary credit and to pay dividends—depends largely or entirely, upon the continued life of an officer thereof who has shown great ability in his management of its affairs. Democratic government however, is founded upon a different theory. No one man is considered essential to its success; its support is derived from taxation. Each officer is elected—appointed or employed for a term, so that he may be displaced at the end of such term if deemed proper by those having the authority to name his successor. No impediment should be placed to the exercise of this duty.

In some of the most important positions, in the government of this State, the term of office is short, and it is forbidden by the Constitution that the incumbent shall succeed himself. It is not presumed that any one will ever become so necessary in such positions that their continued incumbency is necessary to the welfare of the State. On the contrary, it is conclusively presumed that their continuance in the position is likely to become a hindrance to the progress of the State and the preservation of democratic ideals.

There is no express authority for such investment or expenditure of the funds of the Alabama Polytechnic Institute. Is there any implied authority for such investment? We hardly suppose that any lawyer would contend that such authority is intended to be included in a clause of Section 524 of the School Code already quoted, viz.: "and to do whatever else they may deem best for promoting the interest of the institute." This evidently means acts

of like kind to those already enumerated. Such investment of the funds of the institute would be an entire departure from Acts enumerated.

We have been cited for implied authority to Section 522 of said School Code. This Section reads as follows:

> "Such corporation shall have all the rights, privileges and franchises necessary to a promotion of the end of its creation, and shall be charged with all corresponding duties, liabilities and responsibilities."

It must be kept in mind that this institute is a governmental instrumentality, supported by taxation; its purposes are educational; it is not dependent upon its management for funds or credit in the world of finance. How then can the expenditure of money, which is doubtlessly needed for present uses, on insuring a life for its benefit when such life shall cease, be necessary to a promotion of the ends of its creation? As a purely business proposition such an investment of the funds of the institute, if allowable, would be purely speculative, with odds against the advantage of the speculation. Premiums are fixed at rate to make insurance companies safe for paying the amount insured for, when due, with all expenses of the business and a profit added. It is a reasonably safe bet only from the standpoint of the insurance company. The people should not be taxed for such a bet and cannot be. Any taxpayer can, by application to the courts, stop such an investment of money raised by taxes, especially where the power to do so must be implied, and where such implication would, at best, be a strained one, and is contrary to the policy of the State government as shown in her Constitution and laws. We think there is little, or no, analogy, so far as interest in the life of an employee is concerned, between a governmental instrumentality organized for educational purposes, supported by taxation, and a private corporation organized for the purpose of making money for its stockholders. So far as to what the courts have decided about insuring officers of a private corporation is concerned, a great deal has depended upon the angle from which the particular question is reviewed as to whether such insurance policy is upheld. The right to take funds of the institute and use them in such a way is quite a different question from the right of an insurance company, who has entered into contract with knowledge of the facts and received the premiums so paid during the life of the insured, to repudiate the contract, when sued upon it.

In such a case the court would doubtless hold that the insurance company was estopped from denying the insurable interest, and certainly the insurance company could claim nothing because the money to pay the premium was gotten from a source not authorized by law. We, therefore, conclude that such a use of the funds of the Alabama Polytechnic Institute would be unwarranted in law and in fact.

In passing upon your second question I took occasion to correspond with the various attorneys general throughout the United States. No one of them was able to find a case in point. I was careful to give to each of them the statement of facts, and the exact question as propounded by you, and to call attention to those decisions of the Courts relating to the rights of a private corporation to insure the life of the president of same for the benefit

of such private corporation. The Attorneys General of Arizona, Arkansas, Florida, Indiana, Iowa, North Dakota, Ohio, Virginia and West Virginia seemed to be of the definite opinion that this could not be done. I received replies from thirty-nine State Attorneys General. Each one stated that the question had never been passed upon by their Courts or by them. None seemed to consider the decision in the case of private corporations as being sufficient precedent in such a case as considered in your question. None were of the definite opinion that such action was legal. I mention these matters to you so that you will know the extent of my investigation.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 11, 1928.

The State Tax Commission,
Capitol.
Dear Sirs:

Privilege license on money lending.

Opinion by Assistant Attorney General Rayburn.

I have your letter of March 26, 1928.

You invite my attention to Schedule 70 of an Act approved September 15, 1919 (General Acts, 1919, page 419), pertaining to the privilege license tax due from money lenders.

You state that, under this Schedule, it has been held that only one license is required in the same county even though there may be several places of business in said county.

You further state that it is your information that parties engaged in the business of money lending in order to avoid payment of said privilege license, have associated themselves together as a firm or partnership.

As an illustration you cite the practice in this regard in the City of Montgomery, stating that there are in said city several parties who formerly paid separate license as money lenders, but who now have entered a partnership and pay only one license for maintaining separate offices.

You request my opinion:

> Should a separate privilege license be collected under Schedule 70, when there is more than one established place of business in one county?

It is my opinion that one privilege license is all that said Schedule requires of a person, firm or corporation, for engaging in the business of money lending anywhere in any one county in the State of Alabama, without regard to the number of places of business maintained **by said person, firm or corporation.**

The Schedule here considered reads as follows:

"Schedule 70. MONEY LENDERS.—Every person, firm or cor-

poration whose principal business is lending money, shall pay an annual license of one hundred dollars, and this schedule shall apply to all persons engaged in business, whether organized under the laws of this State or any other State or county, but shall not apply to banks or banking institutions regularly organized as such. The payment of the license in one county of the State, as evidenced by the license or official certificate of the judge of probate shall be sufficient; provided, however, that if an office is maintained in more than one county the license shall be payable in each county where an office is maintained."

Opinions of Attorney General, 1917, page 79 (Office Edition).

Yours is more a question of fact to be determined by your own investigation. If the partnership or merger is feigned and not bona fide; if the separate offices are not in fact as well as in theory an integral part of a bona fide partnership, but merely a scheme to circumvent the statute, then a separate license should be paid by each. This is for you to investigate and test.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1928.

Treasurer, Jefferson County,
Birmingham, Alabama.
Dear Sir:

Construction of Act approved September 6, 1927 (General Acts, 1927, page 504), increasing the salary of officers of the inferior court.

Opinion by Assistant Attorney General Knight.

I have your letter of June 7, 1928. You request an opinion as to your authority to pay the increases in salary granted to officers of the inferior court of Ensley by the Act above mentioned.

I am of the opinion that the Act heretofore referred to furnishes authority for the payment of such increases.

By the Acts of 1919, this court, that is, the inferior court of Ensley, was made a court of record.

Acts 1919, p. 457, Section 19.

Section 150 of the Constitution of 1901, provides that the salaries of judges of courts of record may not be diminished during their term of office. The Supreme Court of this State has held that this constitutional provision amounted to a provision that salaries of the judges of courts of record might be increased during their term of office and removed such action on the part of the Legislature, in respect to such officers, from within the influence of Section 281 of the Constitution.

Stone, Treas., etc. v. State, 20 Ala. App. 69.

The Legislature has determined that the inferior court of Ensley is a

court of record. The Supreme Court has decided that the salaries of judges of courts of record might be increased during their term of office, therefore, there is no escape from the conclusion that the Act in question does not fall within the influence of Section 281 insofar as it increases the salary of the judge of said court.

Section 281 of the Constitution has repeatedly been held to have reference to and to affect only officers having a DEFINITE term of office. By the provisions of the Act creating the Inferior Court of Ensley the officers of the court mentioned in the Act of 1927 have no definite term of office, hence there is no constitutional inhibition against increasing their salaries.

The Supreme Court has held that where an Act of the Legislature, while presently applicable to only one county, has a prospective field of operation in all parts of the State, it is a general Act and that the provisions of Section 106 of the Constitution, relating to local acts, need not be complied with.

Birmingham Electric Co. v. Harry, 111 So. 41.
Walden v. City of Montgomery, 108 So. 231.

In view of the above mentioned provisions of the Constitution, and in view of the decisions of the Supreme Court, I feel that the Act in question cannot be said to be limited, in fact, in its application to one city but that the same may be applicable to all cities of the State as they acquire the population limits specified in the Act, which limits appear to be reasonable and not arbitrarily fixed and reasonably related to the purposes to be effected, by the Act.

It is apparent from a consideration of the above reasoning that you are by the Act of 1927, authorized to pay the salaries to the officers of the inferior court of Ensley as therein provided.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1928.

The Judge of Probate,
Wetumpka, Elmore County, Alabama.
Dear Sir:

License—No transfer of privilege.
Opinion by Assistant Attorney General Rayburn.

I have your letter of February 17, 1928, in which you state that in October of last year, A procured a license for the operation of a pool room of four tables. In December of the same year A sold said pool room to B, who took out a license for the same, surrendering the license to A. B operated the tables in said pool room to approximately the 1st of February, 1928, at which time B turned the said business back to A.

Upon this statement of facts, you request my opinion as to what license A should buy?

I advise you that A must take out the appropriate license under Schedule 89, quoted herein, to again legally engage in the pool room business.

Schedule 89 of Section 361, Act approved September 15, 1919 (General Acts, 1919, page 427), reads as follows:

> "POOL TABLES:—For each pool table upon which the game of pin pool, bottle pool, or starboard pool or other like device is played, one hundred dollars. For each table upon which the game of pool is played with fifteen balls, more or less, and not pin pool, twenty-five dollars, provided that the provisions of this schedule shall not apply to pool or billiard tables operated or owned by private individuals used in their houses, or pool or billiard tables operated or owned by private clubs, social clubs, or Y. M. C. A's."

The privilege tax is a tax on the privilege of operating pool tables and is determined by the number of tables and kind of games played thereon. It is not a tax on the table.

> Opinions of Attorney General, 1923, Vol. 2, page 507.
> Opinions of Attorney General, 1924, Vol. 1, page 167.

You do not state the nature of the game played upon the four pool tables. Consequently I cannot advise you whether A must pay $400.00 or $100.00. In granting the license your attention is invited to the Act approved September 5, 1923 (General Acts, 1923, page 224), which should be strictly followed.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1928.

Hon. Malcolm E. Nettles,
County Solicitor of Walker County,
Jasper, Walker County, Alabama.

Dear Sir:

License for closing out sales.

Opinion by Assistant Attorney General Haynes.

I have your letter of April 13th, 1928. You state that in January, 1928, two mercantile concerns in Walker County advertised their stock for sale; that the advertisements each termed same a **"closing out** sale," and in accordance with this advertisement and on the day mentioned, each held said sale as advertised. One of the merchants closed out and the other is still in business.

On the above statement you request the opinion of the Attorney General, as follows:

> Would they be required to comply with the provisions and terms of Schedule 51 of Section 361 of an Act approved September 15, 1919 (General Acts, page 411)?

In answering the above, it is my opinion they would. Schedule 51, supra, is as follows:

"Schedule 51. BANKRUPT SALES, ETC.—Before any person, firm or corporation shall sell or be engaged in the business of selling goods, wares, merchandise or other personal property, such sales being advertised as bankrupt, insolvent, insurance, assignee, trustee, testator, executor, administrator, receiver, auction, syndicate, railroad or other wreck, wholesale or closing out sale, or as goods damaged by smoke, fire, water or otherwise, such person, firm or corporation shall file an application with the probate judge of the county where such sale is held or to be held, for a license, which application shall be accompanied by an affidavit stating all the facts, relating all the reasons for and character of such sale so advertised and represented, and including the statement of the names of the persons from whom the goods, ware, merchandise or other personal property was obtained, the date of delivering to the person applying for such license and the place from which said goods, wares and merchandise, or other personal property was last taken or bought and all details necessary to exactly locate and fully identify the said goods, wares and merchandise, or other personal property, and shall further pay to the judge of probate as a license for the privilege of selling such goods, wares, merchandise, or other personal property, the sum of one hundred dollars, and such license shall be required in each county in which such business may be conducted; and upon filing of such application and affidavit and payment of said sum, the judge of probate shall issue a license to each applicant, but the provisions hereof shall not apply to bona fide sales of general assignees for the benefit of creditors, or bona fide trustees selling under power of sale in any deed of trust or mortgage or lien, executors and administrators selling the goods of their decedent, or to any other officer selling the property under legal process, or to regularly licensed auctioneers selling bona fide at public outcry in the usual course of their business."

You will note the following: "* * * such sale being advertised as * * * closing out sale." If such sale were advertised as a **"closing out sale"** and in pursuance of this advertisement, the sale is actually had, it would be immaterial that the party so advertising did not in fact go out of business. Such license is required for **conducting** the sale under this class of advertising, and not for actually going out of business.

Opinion of Attorney General, January 30, 1926.
Opinion of Attorney General, December 21, 1927.

The decisions cited by you in your inquiry do not affect the view above expressed. The case of Braxton v. The City of Selma, 79 So. page 150, is dealt with what is commonly known as "labor agent." The case of Karthaus v. The State, 95 So. page 563, is likewise not in point. There the Court was dealing with the sale of a stock of goods at auction by a surviving partner.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 12, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Capitol.
Dear Sir:

Act. No. 53, General Acts, 1927, page 45, et seq. Construed as to payment of trial tax fee of $3.00.

Opinion of Assistant Attorney General Evans.

Receipt of your letter of April 14th is acknowledged. You ask if Act No. 53, Acts, 1927, Page 45, et seq., as to trial tax fee, governs in cases tried prior to the passage of said Act, where the said fee has not already been paid out of the fine and forfeiture fund, but was due to be paid out of said fund; or must said Act, in its operation upon said tax, be confined to cases tried subsequent to the passage of said Act.

In reply will say that by express provision of Section 3 of said Act, it is said: "that no * * * * trial tax, whether heretofore accrued or hereafter accruing, shall be taxed against or paid out of the fine and forfeiture fund of any county." This leaves no room for construction. If the Act is valid, then no further trial tax fees can be paid out of the fine and forfeiture fund, whether the same accrued prior or subsequent to the passage of the Act.

I see no reason against the validity of the Act. As said in the case of Brown and Street v. Parris, 93 Ala. 316, speaking of the fine and forfeiture fund:

> "The control and disposition of the fund still resides in the General Assembly, who has to direct what claims shall be paid out of it, the preferences and conditions of payment; **which may be changed or modified at pleasure**—in short, the fines and forfeitures constitute a State fund."

Said statute though, in part, retroactive, offends against no provision of the Constitution, State or Federal. It, in no way, impairs the obligation of any contract; it is not an **ex post facto** law in the meaning of Section 22 of the Constitution of the State. Ex post facto laws apply only in the case of penal statutes.

Calder v. Bull, 3 Dall. 390;
Watson v. Mercer, 8 Pet. 110.
Ogden v. Saunders, 12 Wheaton 266.
Harte v. State, 40 Ala. 32.
Leahart, et al. v. Dudmeyer, et al., 158 Ala. 298.

It is true that a law is not to be construed as having a retroactive effect, unless it is plain from its terms that the Legislature so intended.

Smith v. Kolb, 58 Ala. 645.
Barnes v. Mobile, 19 Ala. 707.
Kidd v. Montague, 19 Ala. 619, 624.

Ex Parte Buckley, 53 Ala. 42.
Boyce v. Holmes, 2 Ala. 54.
Luke v. Calhoun County, 56 Ala. 415.

"Section 22, Constitution, 1901, prohibits the enactment of ex post facto law, but not a retroactive law, so that unless a law impairs the obligation of a contract, or deprives the citizen of some vested right, or is obnoxious to some other provision of the Constitution, the fact that it is retroactive does not render it unconstitutional."

Leahart, et al. v. Dudmeyer, et al., supra.

The filing tax mentioned in said Act, when collected belongs to the State and the fine and forfeiture fund belongs to the State. There certainly can be no valid objection to the Legislature legislating with reference to the payment of this tax out of the fine and forfeiture fund though such Act be retrospective.

So far as the title to the Act is concerned, "An Act to amend Section 4039 of the Code, 1923," is sufficient, since the amendatory Act does not depart from the subject matter of the amended section.

Montgomery v. State, ex rel Enslen, 107 Ala. 383, et seq.

The fact that the Act amending Section 4039 of the Code, 1923, is divided into three sections is immaterial, as there is no constitutional prohibition against such form of amendment.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

July 13, 1928.

The Sheriff,
Selma, Dallas County, Alabama.
Dear Sir:

Clubs and Members of Clubs. Gaming.

Opinion by Assistant Attorney General Haynes.

I have your letter of June 20th, 1928, in which you state:

Please advise if Elks' Clubs and other clubs, or the members thereof, are exempt from prosecution for gaming while attending such clubs.

In my opinion they are not. The individual members of such clubs come under the provisions of Section 4235, Code of Alabama, 1923, and the managers of such clubs under Section 4242 and 4243, Code of Alabama, 1923, and the parties renting rooms to such clubs, come under Section 4243, supra.

Campbell v. The State, 55 Ala. 85.

Under Section 4281, Code of Alabama, 1923, such places when resorted to for gaming may be declared a nuisance, and their operation enjoined. This Section is as follows:

"4281. GAMING PLACES, ETC., DECLARED COMMON NUISANCES.—All places maintained or resorted to for the purpose of gaming, and all places where gaming tables or other gaming devices are kept for the purpose of permitting persons to game thereon or therewith, are declared to be a common nuisance and may be abated by writ of injunction issued out of a court of equity upon a bill filed in the name of the State by the Attorney General or any solicitor or prosecuting attorney whose duty requires him to prosecute criminal cases in behalf of the state in the county wherein the nuisance is maintained, or by any citizens of such county, such bill to be filed in the county in which the nuisance exists; and all rules of evidence and the practice and procedure that pertain to courts of equity generally in this state may be invoked and employed in any injunction procedure hereunder, and all the rules and regulations prescribed by law for the institution and conduct of suits in equity to abate liquor nuisances may be invoked and applied insofar as the same can be adapted to or made applicable, directly or indirectly, or by analogy, to suits in equity under this section."

Cohan v. The State, 110 Ala. 53.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 13, 1928.

Hon. Robert E. Spragins,
County Attorney,
Huntsville, Madison County, Alabama.

Dear Sir:

Preferred Stock—Franchise Tax thereon.

Opinion by Assistant Attorney General Rayburn.

I have your letters of March 22nd and April 5th, 1928.

You request my opinion as to whether or not preferred stock is subject to franchise tax provided by Acts of 1927.

It is my opinion that preferred stock is subject to the franchise tax named in Section 53 of an Act approved July 22, 1927 (General Acts, 1927, page 176).

Section 53 of an Act approved July 22, 1927 (General Acts, 1927, page 176), reads as follows:

"Every corporation organized under the laws of this State, except strictly benevolent, educational or religious corporations should pay an-

nually to the State an annual franchise tax of Two Dollars ($2.00) on each One Thousand Dollars of its **capital stock."**

You will note from the reading of this Section that the words "capital stock" are used without stating that such stock is common stock or preferred stock. Common stock and preferred stock are both capital stock, the difference being that preferred stock takes a dividend before other capital stock.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1928.

Hon. Thos. E. Ellis,
Justice of the Peace,
Abanda, Alabama.

Dear Sir:

Offices—Holding office of county commissioner and justice of the peace—not allowed.

Opinion by the Attorney General.

I have your letter of July 2, 1928. In it you state that you are a Justice of the Peace and were nominated County Commissioner of Chambers County in the May primary.

You request my opinion:

If you can hold both offices at one and the same time I am of the opinion that you cannot.

Section 6750, of the Code of Alabama, 1923, is as follows:

"6750. No county commissioner is eligible to or must discharge the duties, either as principal, or deputy, of any other office."

A Justice of the Peace holds an office. The word "office" in said Section is not limited. Seciton 280, Constitution of Alabama, 1901, has no application, as the Legislature had the legal right to prescribe the qualifications of a county commissioner in this regard.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1928.

The County Treasurer,
Birmingham, Jefferson County, Alabama.
Dear Sir:

County Board of Revenue—Right to employ clerks to same, assign them to duty with other departments, and cause payment of compensation in said capacity.

Opinion by Attorney General.

I have your letter of May 31, 1928. In it you state that on March 20, 1928, the Jefferson County Board of Revenue passed a resolution as follows:

"WHEREAS, heretofore this board received from Hon. H. B. Abernathy, Judge of the Jefferson County Court of Misdemeanors a request for additional clerical help to administer the clerical duties in said court, and

"WHEREAS, said Court has the full quota of Clerks provided for by law for the operation thereof, but it appearing to the Board that additional assistance is necessary for the proper conduct of said Office,

"NOW, THEREFORE BE IT RESOLVED, That Mrs. Hulda Newsome be and she is hereby appointed as an additional clerk of the board of revenue and assigned to duty in the Jefferson County Court of Misdemeanors and her compensation fixed at the sum of $175.00 per month, effective this date."

You state that Mrs. Newsome has presented to you for payment a warrant for services rendered by her under the terms of the above quoted resolution, and that you being in doubt as to the legal right of the Board of Revenue to employ additional clerical help in the manner stated, request my opinion:

Has the Jefferson County Board of Revenue the legal right to employ a clerk to said Board, and assign said clerk to duties which are the duties of another department or county office, and should you honor a warrant issued by said Board in payment for services so rendered?

I am of the opinion that the employment of Mrs. Newsome in the matter stated was illegal.

Please refer to my recent opinions rendered on a subject somewhat similar to this.

The various departments of state government, in many instances have the right to employ clerks to said departments, but nowhere is there any provision, in such instances, that such departments shall employ clerks thereto and assign them to full duty with other departments. The Legislature limited the personnel of the Jefferson County Court of Misdemeanors. It made no provision for the Board of Revenue to employ a clerk to the Board of Revenue and assign that clerk to duty with and to perform the clerical duties of the Jefferson County Court of Misdemeanors. In granting to the Board of Revenue the power to employ clerks generally, it was clearly the purpose

and intent of the Legislature, except where otherwise specifically provided, and no such specific provision is here made, that no employment of clerks to such Board should be had except that the services were services in line of duty of the Board and for the Board.

I am, therefore, of the opinion, as heretofore stated, that the employment was illegal, and that you should not honor the warrant.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1928.

The Commissioner of Maintenance,
State Highway Department,
Montgomery, Alabama.

Dear Sir:

Motor Vehicle—Operating without consent of owner—fine on conviction not paid to State Treasury. Section 3337, Code of Alabama, 1923, considered.

Opinion of the Attorney General.

I have your letter of July 11, 1928. In it you state that recently a party was tried and convicted and fined the sum of $100.00 in the Circuit Court of Etowah County for "operating a motor vehicle in Etowah County without consent of the owner." You further state that the Board of Revenue of said County being of the opinion that the case does not come within what you term "The Alabama Highway Code," no remittance of the fine has been made to the Highway Department.

You request my opinion:

Where a person has been tried and convicted and fined for operating a motor vehicle without the consent of the owner, should the fine be paid into the State Treasury under Section 106, Act approved August 23, 1927, commonly known as "The Alabama Highway Code?"

The offense of which the party was convicted is covered by Section 3637, Code of Alabama, 1923, and does not appear in the Act of August 23, 1927, supra.

As heretofore stated, in several opinions, the only fines payable into the State Treasury under Section 106 of the Act approved August 23, 1927, supra, are those fines on conviction of offenses covered in the several sections of Article 2 of said Act. Fines on convictions of the other articles of said Act are not, by Section 106 thereof, required to be paid into the State Treasury.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1928.

Chairman, Board of Registrars
Lawrence County,
Moulton, Alabama.

Dear Sir:

Registration of Voters.

Opinion of Assistant Attorney General Haynes.

I have your letter of July 5, 1928.
You request my opinion:

Will the registrars be required to meet at any time during the year 1928 before the general election in November, 1928, to register voters.

Section 375 of the Code of Alabama, 1923, as amended by an Act approved August 20, 1927 (General Acts, 1927, page 274) makes provision for the regular session of the Board of Registrars for the various counties of the State and is as follows:

"375. Board of Registrars to Hold Fixed Meeting and Give Notice Thereof. The Board of Registrars in each county shall visit each precinct at least once and oftener if necessary between October first and December thirty-first, 1927, and each two years thereafter, to make a complete registration of all persons entitled to register, and shall remain there at least one-half a day. * * *"

You will note from the section above quoted that the time fixed for the general registration is between October 1st and December 31st, 1927, and each two years thereafter.

The only other time at which the board is authorized to make registration other than that provided above is under Section 376, Code of Alabama, 1923, as amended by an Act approved August 20, 1927, supra, which is as follows:

"Special Registration. In addition to the regular registration provided in this article, the courts of county commissioners, boards of revenue, or other courts of like jurisdiction of the several counties may make an order requiring the books of registration to be opened for ten working days during the month of January, 1921, and each two years thereafter, for the purpose of registering voters, except in counties having more than one hundred and fifty thousand population, as shown by the last federal census or any succeeding federal census, in which counties the Board of Registration shall be opened on the second Monday in December, 1928, second Monday in February, 1929, second Monday in April, 1929, second Monday in June, 1929, second Monday in August, 1929, and every two years thereafter and remain in session six days at each of such sessions for the purpose of registering voters."

You will note from the above section that a special registration may be had in addition to the regular session provided for in Section 375 as amended, supra. This must be on the order of the Court of County Commissioners,

Board of Revenue or other court of like jurisdiction in the several counties except in counties having more than 150,000 population as shown by the last federal census or any succeeding federal census. This section provides that under the order referred to above the books of registration may be opened for ten working days during the month of January, 1921, and each two years thereafter for the purpose of registering voters, and there being no other provision this special registration would have to be held in the month of January of the year designated and at no other time.

See Opinion of the Attorney General, March 7, 1927.

It might be well to state in this connection that Section 376, Code of Alabama, as it now appears in the code is intended to regulate special registration, and provides that a special registration might be had in the month of July in the year 1921 and each two years thereafter, but as amended and quoted above it is changed to January instead of July.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 14, 1928.

The Mayor,
Evergreen, Conecuh County, Ala.
Dear Sir:

Absentee Voters.

Opinion of Assistant Attorney General Haynes.

I have your letter of July 7, 1928, in which you request my opinion:

"Is there any provision of law for casting absentee ballots in a municipal election?"

In reply to your question I wish to state there is such a law. Section 405 of the Code of Alabama provides for this, and is as follows:

"405. ABSENT VOTER DEFINED.—Any qualified elector of this state, whose name at the time of any general, special or **municipal** election appears on the official list of qualified voters in any county in the State of Alabama, and who may at any general, special or municipal election hereafter held pursuant to law in this state, **by reason of his regular business** and in the **performance of his regular duties, be absent** from the **state** or from the **county** in which he is a qualified elector, may vote in such general, special or municipal election in the manner and under the regulations hereinafter prescribed with like effect as if he were casting his vote in person at his regular and proper polling place."

See Opinion of the Attorney General, May 5, 1928.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 16, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Capitol.
Dear Sir:

Voters List—Fees of Judge of Probate for Preparing—What list should contain.

Opinion by Assistant Attorney General Haynes.

I have your letter of June 21, 1928, in which you state the Probate Judge of Lee County has a claim filed with the Court of County Commissioners of that county, asking pay for making a complete alphabetical list of all of the voters of the county, which he filed with the Secretary of State. On this statement of facts you request the opinion of the Attorney General.

1. Is the Probate Judge entitled to pay by the county for making this list?

2. If he is should this list contain all the qualified voters of the county or should it just contain the new list of qualified voters filed by the registrars?

In answering the first inquiry, I am of the opinion that the Probate Judge is not entitled to pay by the county for the making of this list.

Section 401, Code of Alabama, 1923.

Report of Attorney General, 1920-22, p. 344.
Report of Attorney General, 1924-26 p. 88.
Report of Attorney General, 1927-28, April 28, 1927.

Section 401 of the Code of 1923 regulates the making of this list, and in doing so fails to make any provision to pay the Probate Judge for making such a list. Section 3734, Code of Alabama, 1923, on the question of costs and fees is as follows:

"3734. NO FEE CHARGED UNLESS EXPRESSLY AUTHORIZED.—The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this code shall be the only fees that can be collected by any officer."

Troup v. Morgan County, 109 Ala. 162.
Dent and Magruder v. The State, 42 Ala. 514.

I, therefore, hold that the Judge of Probate is not entitled to pay for making this list as no provision is made for payment. I think the clear provision of Section 401, Code of Alabama, 1923, contemplates that this list shall contain the names of the newly registered voters of the county, and not a complete list of the names of all of the registered voters of the county. In referring to the list to be filed by the Probate Judge with the Secretary of State, this section deals simply with the new list, and has no reference to a complete list of names of all the voters. It says, "* * * the registrar shall

each year * * * then provides "* * *the Judge of Probate shall certify an alphabetical list to the Secretary of State," and all the while it is having reference only to the list of newly registered voters.

In answering the second inquiry, he is required to prepare for the Secretary of State, a list of all registered voters of the county containing only the names of the newly registered voters.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Note: This is the list for the Secretary of State and should not be confused with other opinions.

July 16, 1928.

The Commissioner of Maintenance,
State Highway Department,
Montgomery, Alabama.

Dear Sir:

Fines and forfeitures—violation of the "Rules of the Road"—Alabama Highway Code—construing word "census" in application to cities and towns in Section 106 of Act approved August 23, 1927.

Opinion by the Attorney General.

I have your letter of April 3, 1928, in which you state that the Highway Department, acting under Section 106 of the Act approved August 23, 1927 (The Alabama Highway Code) has attempted to collect fines imposed upon and paid by violators of the "Rules of the Road," from cities and towns of over 2,000 population and in several instances the mayors of such cities and towns have reported that their municipalities are **over** 2,000 population **but** upon your referring to the last federal census you find same **not** to be a fact.

You request my opinion:

"What census governs under Section 106, of the Act approved August 23, 1927 (The Alabama Highway Code)?"

I am of the opinion that where the last census taken was a federal census, such census governs, but where, subsequent to the last **federal** census, a census has been taken as provided by Section 1751, Code of Alabama, 1923, the census **thus made** governs.

You will observe by carefully reading Section 106 of the Act, supra, that the word "census" is not limited to a federal census. By our State law, provision is made for the taking of a census by municipalities. Hence it must be inferred that the Legislature, in the absence of any expression to the contrary, had reference to any census provided by law for municipalities..

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 16, 1928.

The Clerk of the Circuit Court,
Walker County,
Jasper, Alabama.
Dear Madam:

Executions for costs.

Opinion of Assistant Attorney General Haynes.

I have your letter of June 25, 1928, in which you request my opinion as follows:

1. When an execution is issued for the maintenance of a prisoner while in jail and returned "no property found" is the clerk entitled to fee from the fine and forfeiture fund for issuing such execution.

2. Is it necessary for the clerk to issue such executions since the adoption of the Code of 1923 since no provision is made for the issuance of such executions of this character in said Code.

I am of the opinion you are entitled to your costs for issuing executions in all criminal cases for costs. When the execution is returned "no property found," out of the fine and forfeiture fund, provision is made for this by Section 4030, Code of Alabama, 1923, as amended by an Act approved February 18, 1927 (General Acts, 1927, page 45), Section 4039, as thus amended, reads:

"Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of the state witnesses, the county treasurer of such county must pay the fees of the officers of the court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted, and have been proved insolvent by the return of execution "no property found," or in cases in which the State enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant, unless the payment or distribution of such funds are otherwise provided for. This section shall be held to apply to all fees of officers of the trial court arising on an appeal by the defendant to the Supreme Court or the Court of Appeals, in cases where the judgment of the trial court is reversed and a new trial allowed, or the defendant ordered discharged. It shall also apply in appealed cases, where the defendant has appealed from a conviction and sentenced to the State penitentiary, and the conviction is affirmed, to such part of the fees of the officers of the trial court, arising on the appeal, as are not paid from the convict fund under Sections 3667 and 3668 of the Code, an execution for such unpaid part of such fees having first been issued against the defendant and returned "no property found." It shall further apply to the fees of the officers of the trial court, arising on an appeal, in cases where the defendant has appealed from a conviction, the punishment fixed being otherwise than imprisonment in the State penitentiary, and the judgment of the trial court is affirmed, provided the defendant be first proved insolvent by the return of the execution 'no property found' * * *."

It is my opinion that the issuance of an execution is as much a part of the costs in a criminal case as any other item which is taxable against the defendant. Notice particularly that part of the above quoted section reading in part: "Must pay the fees of officers of the court arising from criminal cases." Yours is a fee arising from a criminal case and therefore, under proper conditions (when execution has been returned "no property found") is chargeable and payable out of the fine and forfeiture fund of the county.

In answering your first inquiry I have in a general way answered your second, but to further clarify my answer will say that Section 3049, supra, as amended provides:

> "* * * Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of the State witnesses, the county treasurer of such county must pay the fees of the officers of the court arising from criminal cases **in which the defendant is not convicted** and the costs are not imposed on the prosecutor, or in which defendants have been convicted, and have **been proved insolvent** by the return of execution 'no property found.' * * *."

The above section authorized the issuance of an execution by stating "proved insolvent **by the return** of the executions 'no property found.'" It follows that an execution would necessarily have to be issued before there could be a return of "no property found."

However, under the law as stated above, in no event would you be entitled to this item of costs unless there "be a surplus of the fund arising from fines and forfeitures in the county treasury, over and above the sum required to pay the registered claims of State witnesses."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 16, 1928.

Hon. John Miller,
Deputy Solicitor,
Camden, Wilcox County, Alabama.

Dear Sir:

Only one levy required under Section 280 of the School Code.

I have your letter of June 28th, 1928, in which you ask to be advised concerning tax levy for school purposes.

You request my opinion::

> Under Section 280 must the court of county commissioners or other governing board of the county levy the school tax annually or is one levy sufficient for the whole time the tax is to run?"

In answer to your question, I am of the opinion that one levy is all that is required to be made by the Court of County Commissioners after the levy-

ing of the tax by a majority of the voters of a county, under Article 14, Section 280 of the School Code.

Whenever an election is called by the Court of County Commissioners or other governing board of a county for the purpose of levying of tax for school purposes for a given period of time and a majority of the qualified electors vote in favor of the tax, then it is the duty of the Court of County Commissioners or other governing body to levy the tax for the period so voted on in the election. However, it cannot be levied for less than two years.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 16, 1928.

State Tax Commission,
Capitol,
Montgomery, Alabama.

Gentlemen:

Non-resident contractors constructing roads in Alabama, not exempt from payment of motor truck license tax.

Opinion by Assistant Attorney General Brassell.

I have your letter of June 7, 1928, in which you state that non-resident contractors are constructing roads in Alabama and claim to be exempt from the payment of the license tax imposed on motor vehicles. You invite my attention to Section 19 of an Act approved July 22, 1927. (General Acts, 1927, p. 160).

You request my opinion:

Are non-resident contractors constructing roads in Alabama exempt from the payment of license taxes on motor trucks used in the construction of roads under Section 19 of an Act approved July 22, 1927.

(General Acts, 1927, p. 160.)

In answer to your question, I am of the opinion that non-resident contractors are not exempt from the payment of motor vehicle license tax on motor trucks used in constructing roads in Alabama, under Section 19 of the Act approved July 22, 1927 (General Acts, 1927, p. 160). This section is as follows:

"Exemption of non-resident owners.—Exemption of non-resident owners: The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State and not used for hire in this State, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, State, territory, or federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display

his registration number as required thereby. The provisions of this section shall apply as to a motor vehicle owned by a non-resident of this State only to the extent that under the laws of the foreign country, state, territory, or federal district of his residence like exemptions and privileges are granted to motor vehicles duly registered under the laws of and owned by residents of this State, provided that nothing therein shall be construed to permit the use of motor vehicles for hire by non-residents without complying with the provisions of this Act."

Smith vs. State, 102 So. 122.
Parcher, Guardian, etc. vs. Ruse, etc., 202 Ill. 509.
Holmes v. Holmes, 103 So. 884.
Barrow v. Barrow, 106 So. 705.
Tazewell County v. Davenport, 40 Ill. 197, 39 Ontario 63.

In writing Section 19 of the Act, supra, the Legislature did not intend to exempt motor vehicles used by contractors in constructing roads in Alabama, under a contract with the State, from the payment of the motor vehicle license tax. Motor vehicles **used by visitors sojourning in this State, or passing through this State,** are the motor vehicles the Legislature had in mind when it enacted the quoted sections of the Act under consideration; in providing a **"reciprocal exemption"** for non-residents, **it was not intended that motor vehicles used by contractors in construction of State highways should be exempt.**

The words "resident" and "non-residents" have different meanings according to the subject under consideration. When used in reference to elections or the services of legal process, they are often used as synomous with "domicile" or "citizenship." When used in reference to non-resident debtors and the right of attachment, they have to do with the abiding place of the person.

Parcher vs. Ruse, supra.

If the person of the same vocation be taxed for the use of his vehicle on the public highways and in the prosecution of his business, and his competitors in a like business be not taxed for hauling, in a like vehicle, a pondrous article, and by a like frequent use of the highways, and as likely to tax and subject the highways to wear and tear, the exemption would be unjust and arbitrary, not being based upon a substantial distinction which makes one class different from another. Therefore, in my judgment, it was not the legislative intent to exempt such motor trucks from the payment of the license tax.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 17, 1928.

The State Tax Commission,
Montgomery, Alabama.

Gentlemen:

Licenses—Attorneys—Section 7, Act approved July 22, 1927 (General Acts, 1927, p. 153) considered—Officers of State exempt.

Opinion by the Attorney General.

I have your letter of June 22, 1928. You refer to Section 7 of the Act approved July 22, 1927 (General Acts, 1927, p. 153), which requires an annual license of $15.00 to be paid to the State by each attorney engaged in the practice of law, with a definite proviso thereto. You state that there are no exemptions named in the schedule but that you are not certain whether there is any general law which would necessarily exempt these attorneys who are practicing their profession in the occupancy of some State office.

You request my opinion:

"Are such State officers as the judges of the Supreme Court and other courts, solicitors, etc., exempt from the operation of Section 7 of said Act, and if so, under what general law is such exemption made necessary."

I am of the opinion that the judges of the Supreme Court, and the other courts of the State, the solicitors throughout the State, the Attorney General, and his duly authorized Assistant Attorneys General, in their official capacity and in the performance of their duties as such, are not practicing law within the terms of Section 7 of said Act, which, in my judgment, applies only to those attorneys engaged in the private practice of law, and for this reason such parties are exempt from the payment of said license fee if not engaged in the private practice of law in addition to their official duties.

It is a general rule of statutory construction, particularly with regard to tax laws, that it will never be presumed that the State intends that the particular tax shall apply to any of its offices or instrumentalities. The principle has been well defined in effect by Cooley in his work on taxation.

Cooley on Taxation, 3d Edition, p. 263, et seq.

Of course, if a solicitor goes outside of his regular duties as a solicitor and handles legal work in his private capacity, or if any other officer such as named above, should do so, then for engaging in that private practice, such party should be subject to the license mentioned.

You can readily see that there is nothing for the State to gain by taxing its own instrumentalities, and if a public officer, handling legal work in an official capacity for the State, should be held subject to the license tax mentioned, then each and every other professional man of whatsoever profession, engaged in a particular professional capacity for the State, would, if there were a license provided for practicing that particular profession, be subject to the license tax for said profession.

I deem it unnecessary to pass on the question as to whether or not, if

such license were intended to apply to the officers named by you, this would not be an additional qualification for holding certain constitutional offices, and whether same could be done.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Your file PRO:P-10:MFB

July 17, 1928.

The Prohibition Administrator,
New Orleans, La.

Dear Sir:

Pharmacists and Drug Stores.

Opinion by Assistant Attorney General Haynes.

I have your letter of June 30, 1928. In it you state that Davis Drug Company, of Gordo, Alabama, has applied for the renewal of a permit now held by it, and that it employs no registered pharmacist, but Dr. J. L. Davis attends to the work which would ordinarily be done by a pharmacist.

On the above statement you request my opinion as follows:

"Whether the state pharmacy law of Alabama requires the employment of a pharmacist in the compounding of prescriptions, or whether the arrangement above referred to is in accordance with the provisions of your state law?"

It is my opinion that the law regulating the practice of pharmacy in Alabama requires that a licensed pharmacist be in charge of all prescription work in connectioin with any drug store in Alabama, and that all drug stores where prescriptions are compounded must be in charge of a pharmacist licensed under the laws of the State. Section 2829, Code of Alabama, 1923, makes this requirement, and is as follows:

"2829. License required of pharmacists.—No person not licensed as a pharmacist within the meaning of this chapter shall conduct or manage any pharmacy, drug store, apothecary shop, or other place of business, for the retailing, compounding or dispensing of any drugs, medicines, or poisons, or for compounding of physician's prescriptions, or keep exposed for sale, or retail any drugs, medicines or poisons, except as herein after provided, nor shall any person not licensed as a pharmacist within the meaning of this chapter, compound, dispense or sell at retail any drug, poison, or medicinal preparation upon the prescription of a physician or otherwise, or compound physicians' prescriptions except as an aid to or under the supervision of a person licensed as a pharmacist under this chapter, nor shall any owner, or manager of a pharmacy or drug store or other place of business, cause or permit any other then a person licensed as a pharmacist, or assistant pharmacist, or apprentice, to compound, dispense, or sell at retail any drug, medicine, or

poison, except as an aid to, or under the supervision of a person licensed as a pharmacist or assistant pharmacist."

However, Section 2830 provides that any legally licensed practitioner of medicine, veterinary surgery, or dentistry may compound **his own** prescriptions **but not otherwise.** In other words he cannot be in charge of drug business and fill prescriptions indiscriminately given by others than himself.

Section 2830, supra, is as follows:

"2830. Physician, veterinarian or dentist may fill own prescriptions.—Nothing in the preceding section shall be construed to interfere with any legally licensed practitioner of medicine, veterinary surgery, or dentistry, in the compounding or dispensing of his own prescriptions, nor with the exclusive wholesale business of any dealer who shall be licensed as a pharmacist, or who shall keep in his employ at least one person who is licensed as a pharmacist; nor with the sale of poisonous substances which are sold exclusively for use in the arts; or for use as insecticides, when such substances are sold in unbroken packages, bearing a **label** having plainly written upon it the name of the contents, and the word 'poison,' and also the name of at least two readily obtainable antidotes."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 18, 1928.

The Judge of Probate,
Carrollton, Pickens County, Alabama.

Dear Sir:

1. Deed filing tax on deed from Federal Land Bank.
2. Deed filing tax on deed conveying land on which to erect church.
3. Deed filing tax on deed conveying land from husband and wife for love and affection.
4. Deed filing tax on quit claim deed made for nominal consideration, to clear up written title to land.

Opinion by Assistant Attorney General Evans.

This acknowledges receipt of your letter of November 17, 1927. You wish my opinion upon the following questions:

1. Should a deed tax be collected on a deed from the Federal Land Bank to an individual?
2. Should a deed tax be collected on a deed that conveys real estate on which to erect a church or parsonage?
3. Should a deed tax be collected on a deed from husband to wife when the deed is made for love and affection and no money consideration passes?
4. When a quit claim deed is made with nominal consideration merely to clear up title, should deed filing tax be collected?

In answer to your first question will say that a filing tax is due in the case named. The recording of such a deed is done at the request and for the benefit of the grantee. The Federal Land Bank has no interest in such record. There is no provision of law, state or federal, exempting such a deed from the filing tax.

In answer to your second question will say that there is no provision in the deed filing tax law of 1923, Acts 1923, p. 318, nor in the deed filing tax law of 1927, Acts 1927, Section 21½, page 163, exempting such deed from the tax. While Section 91 of the Constitution of Alabama and Section 2 of the Revenue Act, 1923, Acts 1923, page 152, provide that property used exclusively for religious purposes shall be exempt from **ad valorem** tax, there is no provision of the Constitution, or of the statutes of this State, exempting such a grantee from the payment of the deed filing tax, which is a privilege tax. As said in Cooley on Taxation, 3rd edition, page 356, et seq.:

> "As taxation is the rule and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms; it cannot be taken to have been intended when the language of the statute on which it depends is doubtful or uncertain; and the burden of establishing it is upon him who claims it."
>
> "It is also a very just rule that, when an exemption is found to exist, it shall not be enlarged by construction. On the contrary it ought to receive a strict construction; for the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless privilege is limited to the very terms of the statute the favor would be extended beyond what was meant. On this ground it is held that an exemption of property from taxation will not preclude business or privilege taxes being imposed on the favored class," etc.

The principles of law above stated are applicable here. Because property used for religious purpose is exempt from taxation by the statute already cited, the effect of such exemption does not reach a privilege tax upon a religious body for recording a deed made to it. The presumption is that, if the Legislature had intended such exemption it would have provided for it in the statutes of the state. Church and state are separate institutions in this state and the United States. In Alabama no taxes can be levied or colleced for church purposes. In this country the church is, in no legal sense, an instrumentality of government. Section 3 of the Bill of Rights in the Constitution of this State reads as follows:

> "Section 3. That no religion shall be established by law; that no preference shall be given to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes or other rate for building or repairing any place of worship or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this state; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles."

I quote the foregoing as conclusive that there is not implied exemption

in this state of property or privileges so far as churches are concerned. The power to exempt such property or privilege rests with the Legislature, within constitutional limitations against preferences or discriminations. When any exemption from taxation is allowed religious organizations, it should be clearly expressed or else it will be held as not allowed.

In answer to third inquiry will say there is no exemption provided for, in the deed filing tax law, either that of 1923 or of 1927, for filing for record deeds from husband to wife no matter what may be the consideration. The tax is not based upon the recited consideration, but upon the value of the property conveyed. A million dollars worth of property can legally be conveyed for the consideration of love and affection, but the filing tax on such deed of conveyance would be based on the million dollar value.

In answer to your fourth question, will say that where a quit claim deed is made to property, under the statute of 1923, the deed filing tax would be measured by the value of the interest conveyed.—Opinion by Attorney General, 1922-24, p. 330; but never less than fifty cents. Under the statute, 1927, Acts, 1927, Section 21½, there is exempted from the tax "deeds or instruments executed for a nominal consideration for the purpose of perfecting title to real estate and deeds or other instruments or conveyances executed prior to October 1, 1923. Under this provision of the Act of 1927, where a quit claim deed is, in fact, made for a nominal consideration, for the purpose of perfecting written title, then no tax is required. If, however, the consideration actually paid was not nominal, if the party making the deed claimed an actual interest in the property which he conveyed by quit claim deed, then the tax applies and is measured by the value of the interest conveyed. The actual consideration paid would be **prima facie** the value of such interest.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 18, 1928.

Hon. F. A. McCool,
Justice of the Peace,
West Blocton, Bibb County, Alabama.
Dear Sir:

Fines for failure to work public roads of this State go to the county treasury.

Opinion by Assistant Attorney General Haynes.

I have your letter of June 5, 1928, in which you state that as Justice of the Peace you try quite a number of cases against persons for failing to work public roads after legal warning.

You request my opinion:

Where do these fines go?

In answering your inquiry, it is my opinion that all such fines go into the county treasury.

Sections 106 and 194, Act approved August 23, 1927 (Alabama Highway Code), General Acts, 1927, p. 348.

Before a fine can go into the State Treasury and be placed to the credit of the highway fund under Section 106 of an Act of the Legislature approved August 23, 1927 (Alabama Highway Code), General Acts, 1927, p. 390, the offense for which it is assessed must be for the violation of some law contained in Article II, of the Act approved August 23, 1927 (Alabama Highway Code).

Section 194 of said Act approved August 23, 1927, makes it a misdemeanor and provides the penalty for failing to work the public roads after legal notice. It is a re-enactment of Section 5456, Code of Alabama, 1923. It is as follows:

> "Failure to work road after legal notice.—Any person liable to road duty who wilfully fails or refuses, after legal notice, to work the public roads, either in person or by substitution, without a sufficient excuse therefor, must, on conviction, be fined not less than three dollars nor more than ten dollars for each day for which he is so in default and may also be imprisoned in the county jail, or put to hard labor for the county, for not more than sixty days."

Said Section 194 is no part of Article II of said Act. Section 106 of Article II relates to fines and forfeitures for violation of **"the provisions of" Article II only.**

Yours truly,
CHARLIE C. McCALL.
Attorney General.

July 18, 1928.

The Clerk of the Circuit Court,
Wetumpka, Elmore County, Alabama.

Dear Sir:

Fees—Cases Transferred to Juvenlie Court—Section 4039.
Fine and Forfeiture Fund.

Opinion by Assistant Attorney General Haynes.

This is to acknowledge receipt of your letter of January 25th. You inquire whether or not you may charge your fees against the fine and forfeiture fund where one was indicted but not convicted, because the case was transferred to the Juvenile Court.

I am of the opinion that the costs you refer to cannot be made a charge against the fine and forfeiture fund of your county.

Section 4039 of the Code of 1923, regulates the use of the fine and forfeiture fund of the various counties of the State, and is as follows:

> "Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of state witnesses, the county

treasurer of such county must pay the fees of the officers of court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found,' or in cases in which the State enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant, unless the payment or distribution of such funds are otherwise provided for."

The part of the above section which says, "Must pay the fees of the officers of court arising from criminal cases in which the defendants are not convicted," in my judgment, anticipates a trial and the defendant's acquittal and not a mere transfer of the cause to another court, and cannot, in any wise, have reference to cases transferred to the Juvenile Court of a county for final disposition. This statute dates back to the Code of 1876 and was enforced long before the establishment of the Juvenile Court. Therefore, the Legislature could not have had in mind any costs accruing in the circuit or county courts up to the transfer of these cases to the Juvenile Court.

All costs pertaining to criminal cases are penal in their nature, and must be strictly construed. Before an officer makes claim to fees or costs, he must be able to point to some statute directly authorizing the payment.

Mobile Co. v. Williams, 188 Ala. 639.
N. Ala. Ry. Co. v. Lowry, 3 Ala. App. 639.

I am of the opinion that the matter referred to in your request is not a proper charge against the fine and forfeiture fund of your county.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 18, 1928.

The Judge of Probate,
Bay Minette, Baldwin County, Alabama.
Dear Sir:

Toll Bridge License.

Opinion by Assistant Attorney General Rayburn.

I have your letter of March 16th, in which you state that the Cochrane bridge, which is being operated as a toll bridge, is situated more than one-half in Baldwin County, and that said bridge is not within two miles of an incorporated town or city. You further state that the income derived from said bridge is more per year than is set out under Schedule 115 of the Revenue Laws of 1923, to-wit, $600.00.

Upon the foregoing statement of facts you request the opinion of the Attorney General, as follows, viz.:

"Should the operators of the Cochrane Bridge pay a license in Baldwin County, and if so, what amount and under what schedule?

Section 115, Revenue Laws of Alabama, 1923, appearing at page 219 thereof, reads in part as follows:

> "For each toll bridge or ferry where thoroughfare tolls are charged for animals or vehicles crossing the same, when not within two miles of the corporate limits of a city or town of two thousand inhabitants, where the income is more than $300.00 and less than $600.00 per annum, five dollars."

Since the income from said bridge is over six hundred dollars, the maximum amount set out in that part of said schedule above quoted, and the bridge is located more than two miles distant from a city having two thousand inhabitants, the operators thereof are not required to pay a license in Baldwin County. In this schedule, the Legislature, has failed to levy a license for operating a toll bridge, located more than two miles from a city of two thousand inhabitants, where the income exceeds six hundred dollars per annum.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

July 19, 1928.

The State Auditor,
Montgomery, Alabama.
Dear Sir:

Charter fees for foreign corporations.

Opinion by Assistant Attorney General Rayburn.

I have your letter of March 26, 1928.

You request my opinion as to whether or not an Act approved March 7th, 1907 (General Acts, 1907, p. 422), providing for admission fees for foreign corporations has been repealed.

You are advised that said Act has not been repealed, but to the contrary, it is now a valid and legal statute of the State.

Section 42 of an Act approved July 22, 1927 (General Acts, 1927, p. 171), is not in conflict with said Act of 1907. Section 42 states that a foreign corporation, before qualifying to do business in the States of Alabama, must pay a certain fee each year for certain benefits and privileges, both to the people of the State and to the corporation, for engaging in said business within the State of Alabama.

Said section further states:

> "* * * in addition to other license and privilege taxes required to be paid by law, etc."

Thus, it seems that Section 42 of said Act does not repeal Revenue Laws heretofore enacted, which are not in conflict with the provisions of the latest expression of the Legislature of Alabama on the subject of taxes and fees due from foreign corporations desiring to enter the State of Alabama.

The Act approved March 7, 1907, concerns only the fees to be charged upon entering the State, which has to be paid only once, while the Act approved July 22, 1927, provides the yearly payment of certain fees from said corporations. The payments under one Act are to be made to the State Auditor, while under the other they are to be made to the Secretary of State.

The last sentence of Section 3 of an Act entitled, "An Act to adopt a Code of Laws for the State of Alabama," approved August 17, 1923 (General Acts, 1923, p. 127), reads as follows:

> "Likewise, no statute applying to the **revenue** laws of this State, or to the taxation, etc. * * * **or relating to such subjects,** shall be repealed or affected in any manner by the adoption of this Code, or by the failure to incorporate such statute as a part thereof."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 1, 1928.

Hon. John A. Darden,
County Solicitor,
Goodwater, Alabama.

Dear Sir:

Justices of the Peace—Prohibited from practicing law. Construction of an Act approved September 7, 1927 (General Acts, 1927, p. 669).

Opinion by Assistant Attorney General Rayburn.

I have your letter of July 26, 1928.
You request my opinion:

1. Is it legal for a Justice of the Peace, or Deputy Sheriff, to draw or prepare summons and complaints, bonds for garnishment, attachment or detinue, without compensation, for litigants, or prospective litigants, in Justice of the Peace Courts under subdivision (a) of Section 6248, Code of Alabama, 1923, as amended September 7, 1927 (General Acts, 1927, p. 669)?
2. Under subdivision (b) of said Act, has a Justice of the Peace or Notary Public a legal right to draw or prepare deeds, notes, mortgages and wills where a charge is made for the same?
3. Under subdivision (d) of said Act has a Justice of the Peace the authority to undertake to collect accounts, notes or mortgages, by suit or otherwise, by preparing the papers incident to such collection?

In answer to your first question, it is my opinion that a Justice of the Peace, Deputy Sheriff or any person in the State of Alabama may not legally prepare the papers mentioned by you in said question, without first having obtained a license to practice law.

In answer to your second question, it is my opinion that a Justice of the

Peace, Notary Public or any other person has not the legal right to prepare deeds, notes, mortgages and wills, where a charge is made for same unless such a person has a license to practice law.

In answer to your third question, it is my opinion that a Justice of the Peace is prohibited from preparing such papers as you mention in your third question.

The Act approved September 7, 1927 (General Acts, 1927, p. 669), which amends Section 6248, Code of Alabama, 1923, defines the practice of law within the State of Alabama. Said Act states that only such persons as are regularly licensed have authority to practice law. Subdivision (a) of said Section makes it a misdemeanor for a person to prepare said papers or pleadings or documents with or without charging therefor, when such a person has not a license to practice law. Subdivision (b) and (c) of said Act names the enforcement of certain rights and requires that the person acting for a client must receive a consideration, reward or pecuniary benefit, in his representative capacity, before he may be found guilty of violating said subdivisions (b) and (c). Subdivision (d) of said Act provides that any person who "as a vocation, enforces, secures, settles, adjusts or compromises defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense, is practicing law."

Said Act does not prohibit any person from attending to and caring for his own business, claims or demands; nor does it prohibit a person from preparing abstracts of title, etc., without procuring a license to practice law.

Opinions of Attorney General, 1927, Vol. 3, p. 149 (Office Edition).
Opinions of Attorney General, 1927, Vol. 3, p. 168 (Office Edition).
Opinions of Attorney General, 1927, Vol. 3, p. 169 (Office Edition).
Opinions of Attorney General, 1927, Vol. 3, p. 193 (Office Edition).

It should be understood that by this ruling no attempt is made to prevent a Justice of the Peace from charging the fees which are fixed by law for said services, for example, taking acknowledgments.

Opinions of Attorney General, 1927, Vol. 3, p. 177 (Office Edition).
Opinions of Attorney General, 1927, Vol. 3, p. 190 (Office Edition).
Opinions of Attorney General, 1927, Vol. 3, p. 353 (Office Edition).
Opinion of Attorney General of June 28, 1927, to Hon. R. J. Jacobs, Justice of the Peace, Goodwater, Alabama.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 1, 1928.

State Tax Commission,
Attention Hon. J. S. Tilley, Associate Member,
Capitol.

Dear Sir:

Construction of Sub-division (h) of Section 4½ of Revenue Act, 1923 (Acts 1923, pp. 158 and 159).

Opinion by Assistant Attorney General Evans.

I have your letter of August 1, 1928.
You request my opinion upon the following facts:

"A mortgage was made, conveying certain lands lying in the State of Alabama, to secure an indebtedness of $265,000.00. No property lying outside the State of Alabama is conveyed by this mortgage. It is recited in this mortgage that it is given in addition to a deed of trust given upon lands situated in Mississippi to secure the same indebtedness.

You ask should any deduction in the mortgage filing tax for recording the mortgage on the lands in Alabama be made on account of the deed of trust conveying lands in Mississippi to secure the same debt.

In reply will say that the only provision made for deduction on account of lands lying in another state is found in subdivision (h) of Section 4½ of the Revenue Act, 1923 (Acts 1923, pp. 158 and 159). This subdivision applies only to property embraced or described in the instrument offered for record. This means property conveyed by the instrument offered for record. When part of the property, conveyed by the mortgage offered for record lies in another state, the deduction must be made. No other deduction is provided and hence, no other deduction is allowable.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 1, 1928.

Mr. S. C. D. Brown,
Justice of the Peace,
Dadeville, Alabama.

Dear Sir:

Final jurisdiction of Justice of the Peace in Criminal Cases.

Opinion by Assistant Attorney General Evans.

Your letter of July 16th is acknowledged. You desire to know if you, as Justice of the Peace, have final jurisdiction to hear and determine a charge against one for giving a check upon a bank in which he has not sufficient funds to pay the check.

In reply will say that, under the common law, Justices of the Peace have no final jurisdiction in criminal cases.

Witt v. State, 130 Ala. 129.

You, therefore, must look to the statutes of the State for such authority. Section 3847 and 3848 of the Code, 1923, contain all such general authority that I have been able to find. There may be local Acts, not in conflict with the provisions of said Section 3847, where further authority is given; but none such have been called to my attention.

I am, therefore, of opinion that you have not final jurisdiction in the case named.

You state in your letter:

> "It seems to me that a Justice of the Peace ought to have the right to try these cases because there is so much of this being done."

The same reasoning will apply to murder, highway robbery and numerous other felonies. The answer is that the Legislature has not yet seen fit to confer such jurisdiction upon justices of the peace. It is for the Legislature to decide what shall be done about the matter.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 2, 1928.

Dr. S. W. Welch,
State Health Officer,
Montgomery, Alabama.

Dear Sir:

Lien acquired by municipality, on mortgaged property, under the provisions of Section 2051 of Code, 1923, inferior to prior mortgage.

Opinion by Assistant Attorney General Evans.

I have your letter of June 19, 1928, in which you request my opinion upon the following:

> 1st. Where a municipality acquires a lien for installing water closet upon property on which such water closet is installed, under the provisions of Section 2051 of Code, 1923, there being a mortgage on said property at the time said lien is acquired, is the lien of the municipality superior to the mortgage and does it have priority over such mortgage.
>
> 2nd. Where the mortgage represents the major interest in said property, is it necessary to notify both the owner of the property and the holder of the mortgage, or merely notify the owner of the property?

In reply will say that we have been able to find no statute other than said Section 2051, which has any bearing upon the questions propounded. This section fails to make the lien therein provided superior to a prior lien upon the property. In my opinion the whole context of said section shows that there was no legislative intent to make such lien superior to a prior mortgage existing at the time the lien is acquired. By the terms of said section,

the installation is made at the expense of the "owner." As to the city, the mortgagor is the owner.

Turner Coal Co. v. Glover, 101 Ala. 289.
Denby v. Mellgren, 58 Ala. 147.
Duval v. McClosky, 1 Ala. 708.
Cowley v. Shelby, 71 Ala. 452.
Comer v. Shehan, 74 Ala. 452.

It is, therefore, the mortgagor, in such a case, that the statute is speaking of. The existing mortgage is, in no way, affected by the lien acquired by the city.

The last sentence of said Section 2051 clearly indicates that there is no legislative intent to make this lien superior to a prior valid lien or mortgage:

> "The filing of such statement shall operate as notice of the existence of such lien from the date of its filing."

It is not superior to a mortgage made subsequent to the acquisition of the lien by the municipality, where the mortgagee has no notice of the lien actual or constructive. Constructive notice of the lien begins only with the filing of the statement required by said section "with the judge of probate of the county in which such property is situated for record in the mortgage records of the county."

From the foregoing, it follows, first, that the lien of a municipality for installing water closets is not superior to a prior mortgage, existing at the date of acquisition of the lien by the municipality, and second, that there is nothing to be gained by giving notice to a mortgagee.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 7, 1928.

The Judge of Probate,
Troy, Pike County, Alabama.
Dear Sir:

Appointing Board of elections.

Opinion by Assistant Attorney General Haynes.

I have your letter of May 4, 1928, in which you state that in the May primary, 1928, the Probate Judge and Circuit Clerk were candidates to succeed themselves in office and that under Section 441, Code of Alabama, 1923, the Governor appointed two persons on the Appointing Board of Pike County to take the place of the Judge of Probate and Clerk who were disqualified at that time from acting on said board under Section 439, Code of Alabama, 1923. The Probate Judge and Clerk were not successful in the primary and are not now candidates of any party or independent movement in said County or State to be voted on in the November election.

Under the facts above set out you desire my opinion:

Are the Probate Judge and Clerk of the Circuit Court now qualified to resume their places on the Appointing Board and to appoint managers, clerks, etc., for the November Election, 1928?

It is my poinion that the Judge of Probate and Circuit Clerk are now qualified to resume their places on the appointing board.

Sections 437, 443, Code of Alabama, 1923.

The appointments were made under Section 441, Code of Alabama, 1923, to meet an emergency which has arisen in the May primary. This emergency has been met. The Judge of Probate and Circuit Clerk were defeated in this primary. They are still in office and by reason of their defeat their disqualification on this board has been removed and they are now eligible to resume their places on said board.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 7, 1928.

The State Tax Commission,
Capitol.
Dear Sirs:
Attention: Mr. Jno. S. Mooring.

No privilege tax required on planing mills under Schedule 122 of Revenue Act, 1919, Acts 1919, page 437.

Opinion by Assistant Attorney General Evans.

I have your letter of March 14th, 1928. You state the Court of Appeals of Alabama in Nash v. State, 110 So. 797, holds that all planing mills should take out a license under Schedule 122, Revenue Act 119, Acts 1919, page 437, and that they would not be required to take out license under Schedule 125 and 126 unless a lumber yard or wholesale lumber business was conducted at a place other than the saw mill.

In reply will say that it is my opinion that you have somewhat misconstrued the decision in Nash v. State. This opinion does not hold that a planing mill must take a license under Schedule 122. It held that in the case under consideration the defendant properly took out a license for a saw mill under Schedule 122 and was not due a license under Schedule 126 of the Revenue Act 1919. The opinion states the facts of the case as follows:

"It is admitted that whatever business was done was the act of defendant as the alter ego of the Kentucky Lumber Company, a corporation, of which he was manager.

"It also appears that the only business carried on by the Kentucky Lumber Company was through its **saw mill** at Sulligent, Ala., which saw mill was equipped with complete machinery for the manufacture of

lumber and that, for the most part, this manufacture began with rough logs and ended when the finished product was in standard shapes, sizes and grades ready for market.

"A small percentage of the material was purchased from small and inferior mills nearby, none of which had been completely manufactured into standard products. When the rough dimension product was purchased, it was, in every instance, put through a process of manufacture in defendant's mill to bring it to standard requirements necessary to be sold as standard lumber."

The foregoing clearly shows that the plant contained a saw mill as well as a planing mill. The license tax approved in the opinion was for operating the saw mill—not for operating the planing mill. No license is required for operating a planing mill.

As to the other part of the opinion holding that where a person buys lumber and dresses and sells it he is not a lumber dealer, the conclusion is not very logical. Such a person buys and sells lumber and is a lumber dealer. He may kiln-dry it, or dress it, and it is still nothing but lumber. It is not made into something other than lumber by such process.

A person who buys lean, rough horses and then fattens and curries them for sale and sells them, is a horse dealer, although he improves the condition of the horses that he buys and makes them more valuable before selling them. He buys horses and sells the same horses in an improved condition. He would hardly be termed a raiser of horses. A change in the condition of an article does not make it into something of a different kind.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 8, 1928.

Hon. I. T. Quinn, Commissioner,
Department of Game and Fisheries,
Capitol.

Dear Sir:

Non-resident of State required to take out license as provided by Section 4 of Act No. 588, Acts, 1923, page 762 et seq. to fish in fresh waters of State.

Opinion by Assistant Attorney General Evans.

Your letter of August 7th to hand. You wish to know what license, if any, a non-resident of this State must procure before fishing in any of the fresh waters of this State.

In reply will say that the reply to your question is found in Section 4 of Act No. 588, Acts 1923, p. 762 et seq. This section reads as follows:

"Section 4. That for the purpose of carrying out the provisions of this Act, there is hereby imposed fishing license fees as follows: Every non-resident of the State who fishes with hook and line, troll fly, spin-

ner or substitute therefor, in any of the fresh waters of this State, shall pay $5.00 for a State fishing license, which license shall be issued under the same regulations and in like manner as hunting license are issued."

It is clearly seen from the foregoing that a non-resident of this State before fishing in any of the fresh waters of this State must take out a state license and pay therefor the sum of five dollars. The Judge of Probate of any county in the State may issue the license.

The penalty for fishing in any of the fresh waters of the State without first taking out such license is provided by Section 12 of the same Act, which section reads as follows:

"Section 12. That upon conviction for a violation of any of the provisions of this Act, not otherwise provided for, there shall be imposed a fine of not less than $25.00 nor more than $100.00 for each offense, and half of said fine shall be paid by the court, collecting same, to the informer other than a salaried game warden, or agent, and the other half shall be remitted to the Commissioner of Game and Fisheries, who shall at once make remittance to the State Treasurer who shall cover said remittance into the State treasury to the credit of the fish hatchery fund; provided, that where there is no informer other than a salaried warden, or agent, the entire amount of the fine shall be remitted to the Commissioner of Game and Fisheries, which shall be by him covered into the State Treasury to the credit of the fish hatchery fund."

Before any person can fish in the fresh waters of this State with hook and line, troll fly, spinner or substitute therefore without license, he must have been a bona fide resident of this State for twelve months prior to such fishing, according to the regulations applied to hunting.—Sections 682 and 683, Act No. 601, Acts 1923, pp. 800 and 801.—For the purpose of this license a person is regarded as a non-resident until he has actually resided in this State for twelve months.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 9, 1928.

Judge of Probate,
Franklin County,
Russellville, Alabama.

Dear Sir:

Filing Tax on quit claim deed—Section 21½, Revenue Act, 1927. Acts 1927, page 163, et seq.

Opinion by Assistant Attorney General Evans.

You wish to know what filing tax must be paid for filing for record a quit claim deed.

In reply will say that the filing tax for recording a quit claim deed depends upon the value of the interest conveyed by the deed. A quit claim deed

conveys all the title and interest that the grantor has in the property named or described. If the grantor owns the entire interest in the property then the filing tax is measured by the entire value of the property; if he owes a half interest, then by the value of the half interest and so on for any amount interest owned by the grantor.

If the grantor owns no interest in the property conveyed and executes a quit claim deed to a person for a nominal consideration merely to perfect the record title of the grantee to the lands, then, under the provisions of Section 21½ of Revenue Act, 1927, Acts 1927, page 163 et seq. No filing tax is required.

You should not file a quit claim deed for record until the person offering same for record, shows to your satisfaction what interest in the property described is conveyed by it. If an interest of value is conveyed then the tax is measured by the value of such interest; if the deed is made for a nominal consideration merely to perfect the record title of the grantee, then no filing tax is required.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 10, 1928.

The Superintendent of Education,
Coffee County,
Elba, Alabama.

Dear Sir:

Sale of school warrants, under authority of Section 281 of School Code, below par.

Opinion by Assistant Attorney General Evans.

I have your letter of June 29, 1928, in which you acknowledge receipt of my letter of June 22nd.

You state that you probably did not state your question of former date clearly. You now request my opinion:

Can the County Board of Education, under Section 281, et seq., of the Alabama School Code of 1927, issue and sell school warrants bearing 5½% interest per annum to a purchaser below par?

In reply will say that said Section 281 provides:

"The County Board of Education * * * may issue and sell school warrants bearing interest at a rate not to exceed six per cent per annum, etc."

The above provision does not require that the warrants issued and sold shall bear any special rate of interest or be sold at any special price. It simply places the maximum rate of interest which a loan may bear. The sale complies with the statute provided the sale price of the warrants plus the

interest contracted to be paid on the warrants during the years the warrants are to run before due and payable does not exceed the par value of the warrants plus six per cent per annum interest thereon for such period of time.

Our Supreme Court has held that although a statute may provide that a bond bearing a certain rate of interest shall not be sold below par, this does not prevent a bond bearing a lower rate of interest than the rate named, being sold below par, provided the cost of the loan in principal and interest added together does not exceed the par value of the bond with interest thereon at the certain named rate per annum, for the period of time contracted for, added thereto.

Carmichael, et al., vs. City of Dothan, et al., 211 Ala. 492.

The opinion of June 22, 1928, was based on the assumption that the sale might result in a greater rate of interest than the maximum provided by the School Code. The last paragraph of the opinion of June 22, 1928, as well as the next to the last paragraph of an opinion of June 29, 1927, to the County Superintendent of Coosa County are hereby limited to the provisions of this opinion. In all other respects they will continue in force, it being my intent not to overrule either of them, but to explain by this opinion the assumption of facts, on which each was based.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 11, 1928.

Hon. Geo. Malone,
Judge of Probate,
Athens, Alabama.
Dear Sir:

Is the County authorized to pay for stationery used by the County Solicitor.

Opinion by Assistant Attorney General Evans.

Your letter of August 6th is acknowledged. You wish my opinion as to whether or not the County would be authorized to pay for stationery used by the County Solicitor.

In reply will say that the County would not be authorized to pay for such stationery unless the County Solicitor can point you to a statute clearly authorizing such payment.

The common law provides no such authority, and if there is a statute authorizing it, he should be able to cite you to it.

With the little time I have had to devote to searching the universe I have been unable to find such a statute. If a statute supposed to give such authority is cited, I shall be pleased to give you my interpretation of it.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 11, 1928.

Hon. C. F. Winkler,
Judge of Probate,
Greenville, Alabama.

Dear Sir:

When term of office of member of county school board of education begins.

Opinion by Assistant Attorney General Evans.

Your letter of August 6th to hand. You state that there will be elected at the coming November election two members of the county school board of education. You wish my opinion as to when, if elected, such members take office.

In reply will say that, in my opinion, such members may take office as soon after election as they shall qualify. Section 89 of the School Code, 1927, provides that "at the general election of State and County officers a member or members shall be elected for a term of six years to succeed the member or members whose term or terms of office **expire at that time.** The members of the county board of education shall hold office until their successors have been elected and qualified * * *." This clearly indicates that the terms of the officers whom they succeed ends at the time of the election; but the outgoing officers hold until the newly elected officers qualify.

Yours very truly,

CHARLIE C. McCALL,
Attorney General.

August 11, 1928.

Mr. A. W. Bond,
N. P. and Ex-Officio J. P.,
Adamsville, Jefferson County, Alabama.

Dear Sir:

Jurisdiction of Justice of the Peace.

Opinion by Assistant Attorney General Evans.

Your letter of August 9th to hand. You wish to know if Justices of the Peace have jurisdiction of the offenses named in Sections 80½ to 101, both inclusive, of the Highway Code, adopted by the Legislature of 1927.

In reply will say that at Common Law justices of the peace have no final jurisdiction of any criminal offense. All of their final jurisdiction in **criminal** cases is derived from the Acts of the Legislature; when it is not to be found in any of the Acts of the Legislature, they have not got it. I find no Act giving justices of the peace final jurisdiction in such cases. I must, therefore,

advise that they have no such final jurisdiction. Justices of the Peace may issue warrants in such cases returnable to any court in the county having final jurisdiction.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 11, 1928.

The Judge of Probate,
Hamilton, Marion County, Alabama.
Dear Sir:

When does a touring car become a truck and require a truck license.

Opinion by Assistant Attorney General Evans.

Your letter of August 6th received. You wish my opinion upon the following:

> A merchant takes a Ford touring car, takes out the back seat and a box for hauling goods is substituted for the back seat which was made to carry people. The merchant then uses the newly arranged vehicle as a dray for hauling goods from the depot to his store.

You wish to know if any license is required for operating such motor vehicle upon the highways, and, if so, what license.

In reply will say that when a touring car is so treated and used it loses its identity as a touring car and since it is made suited for and used for transporting freight instead of people it becomes a truck.

It is, in my opinion, immaterial what kind of gear it has. If adapted to and used for hauling freight instead of people, it is, within the meaning of Section 16 of Act. No. 290, Acts, 1923, page 284, a motor truck and requires a motor truck license.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 11, 1928.

The Judge of Probate,
Houston County,
Dothan, Alabama.
Dear Sir:

World War Veterans: Not exempt from road duty.

Opinion by Assistant Attorney General Koonce.

I have your letter of June 12, 1928. In it you state that the Board of Revenue of Houston County passed a resolution exempting World War

veterans from the payment of road tax and instructing you, as Judge of Probate, to refund the tax to all veterans who had paid it.

You request my opinion:

> Does the above action give you, as Judge of Probate, authority to draw warrants on the per capita road tax fund for such refunds on claims, duly presented and proved?

In my opinion the Board of Revenue was without authority to pass a resolution exempting World War veterans from the payment of road tax and you cannot refund the road tax to any World War veterans who have paid the same.

Section 1347, Code of 1923, gives courts of county commissioners, boards of revenue or other like governing bodies of the several counties general superintendence of the public roads, bridges and ferries of their respective counties. Said Section contains the following:

> "To this end they have legislative, judicial and executive powers, except as limited in this article."

Section 1354, Code of 1923, provides what persons shall be exempt from road duty. This section was amended by Section 164 of an Act approved August 23, 1927 (General Acts, 1927, page 348).

Neither Section 1354 nor the amendment thereto contains any provision for the exemption of World War veterans from road duty.

It appears to be clear from said Sections 1347, 1354 and the amendment thereto which is referred to above, that courts of county commissioners or boards of revenue have no authority to exempt any persons from road duty other than those persons who are exempt under the provisions of Section 1354 and the amendment to said Section.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 14, 1928.

Hon. G. T. Pickett,
Justice of the Peace,
Headland, Alabama.
Dear Sir:

> Justice of the Peace has no final jurisdiction of offenses mentioned in sub-division (b) of Section 103 of Highway Code.
>
> Opinion by Assistant Attorney General Evans.

Your letter of August 11th to hand. You wish to know how justices of the peace can make a defendant pay the two hundred dollar fine provided by sub-division (b) of Section 103 of the Highway Code. I note that you say

that you can make him serve the twenty days in jail but do not know what to do when he refuses to pay the two hundred dollar fine.

In reply will say that you seem to be laboring under a misapprehension of the law. Justices of the Peace have no final jurisdiction of the offenses referred to in sub-division (b) of Section 103 of the Highway Code. Any sentence pronounced by a justice of the peace in such cases, whether for jail sentence, or fine, is void. The only authority a justice of the peace has in such cases is to issue warrant for arrest returnable to some court of competent jurisdiction to try the defendant on the charge preferred. I do not know where you get the idea that you, as justice of the peace, have jurisdiction to try those charged with such offenses. If you know of any statute which appears to you to give justices of the peace such jurisdiction, please call my attention to it, that I may consider it.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 14, 1928.

The State Tax Commission,
Capitol.

Attention: Mr. Jno. S. Mooring

Dear Sirs:

Authority of license inspectors to seize tags illegally used on motor vehicles.

Opinion by Assistant Attorney General Knight.

This is to acknowledge receipt of your letter of August 8th in which you inquire as to the authority of license inspectors to seize automobile tags which are being illegally used.

I am of the opinion that a license inspector has ample authority to seize any tags which are being used illegally on any motor vehicle.

A license inspector has the same power to arrest persons violating the revenue law of the State as is now vested in sheriffs of the State.

Section 72 of the Act of 1927, approved July 22, 1927, page 185 (General Acts, 1927).

It has been settled in this State that by force of statute in cases of felony an officer has the right to seize any money or thing found upon the person of any individual charged with commission of a felony when such thing is connected with the offense, such as evidence. Under the Common Law an officer also has the same right when arresting in the case of misdemeanor to seize anything found in possession of the defendant or upon his person which might be used as evidence of the offense.

Our Supreme Court has held that it is the duty of an officer having no authority other than the right to make the arrest, to search the party

arrested, and to seize and remove from him any money or thing connected with the offense, or which may be used as evidence against him on the prosecution.

Ex Parte Hurn, 92 Ala., page 102 (See particularly page 112 of the opinion).

A careful consideration of the above decision discloses that an officer making the arrest who seizes property of the offender to be used as evidence in the prosecution, or property connected with the offense, is violating no right of the defendant protected by the constitutional provision securing him from unreasonable searches and seizures.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

MTK:J
August 15, 1928.

Hon. R. E. Tidwell,
Superintendent of Education,
Montgomery, Alabama.

Dear Sir:

I have your letter of March 28, 1928, with copies of letters of Hon. Harwell G. Davis and Hon. W. J. Wynn, City Attorney of Birmingham, enclosed. You request that I advise you as to the constitutionality of Section 720 of the School Code of 1927.

The School Code of 1927, Section 720, provides that any person residing in a county of over two hundred thousand population and who pays taxes on real estate situated in any municipality in such county, which municipality has over seventy-five thousand population may, although not residing in such municipality, send his children to any public school of such municipality upon the same terms, conditions and charges as if he resided within the corporate limits of said municipality.

It has been insisted that the above Section 720 is invalid because it allows the children of one district to attend the schools of another and that this is violative of Section 3 of the school tax amendment to the Constituion which Section provides that the funds arising from the special school tax levied in any district which votes the same independently of the county shall be expended for the exclusive benefit of the district, as the law may direct. Insistence has also been made that said Section 720 was not validly enacted into law because it was not included in the list of changes made in the school laws. If the above Section 720 is invalid for reasons other than those named above, then it will not be necessary for us to discuss the merits of the above matters.

The Constitution of Alabama of 1901, Section 110, defines general, local and private or special laws.

The Supreme Court of Alabama in the case of State, ex rel Saltsman, v. Weakley, et. al., 153 Ala. Reports 648, held that when classification was made

in the enactment of a law so that the law would apply to only one city in the State, such law was a local law and that it was void if no notice was given of the intention to apply for the enactment of same as provided by Section 106 of the Constitution of the State of Alabama.

It will be observed that the above Section 720 applies only to one city—Birmingham.

In view of the above, it is my opinion that said Section 720, of the School Code of 1927, is a local law and that it is invalid because notice was not given as required by Section 106 of the Constitution of 1901.

We are, furthermore, of opinion that the classification attempted by said Section is inadmissible.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 15, 1928.

Hon. W. H. Owens,
Representative of Barbour County,
Eufaula, Alabama.

Dear Sir:

Senate Bill No. 393, Local Acts, 1927, page 322 **et seq.** Apparently constitutional.

Opinion by Assistant Attorney General Evans.

This acknowledges receipt of your letter of August 14th, and prior letters asking my opinion as to the constitutionality of Senate Bill 393, Local Acts, 1927, page 322 et seq.

In reply will say that on examination of the Act, nothing occurs to me that would make the Act unconstitutional. You give no reason why you ask the question, or why your suspicion has been aroused. On its face, it appears to be all right. I presume it was advertised as required by the Constitution of Alabama. You ask specially with regard to Section 7 of the Act. I presume you question the power of the Legislature to confer upon the Board of Revenue such legislative power as is contained in this Section. The Board of Revenue is the agency through which the county largely functions. The power to levy the tax in question can properly be delegated to the County by the Legislature.—Clark vs. Mobile, 67 Ala. 17; Schultes vs. Eberly, 82 Ala. 242.

If there is any special reason why you consider the Act unconstitutional, please state it, that I may give the matter further consideration.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 17, 1928.

Farmers & Merchants Bank,
Depository for Escambia County,
Brewton, Alabama.
Gentlemen:

Fees of Justice of the Peace are not such claims as can be paid out of fine and forfeiture fund.

Opinion of Assistant Attorney General Haynes.

I am in receipt of your letter of August 8, 1928, in which you state that a Notary Public and ex-officio Justice of the Peace is demanding that you as the county depository for Escambia County pay his fees in cases which have been made returnable by him to the County Court and the cases nolle prossed or the defendant acquitted or abated for other reasons.

It is my opinion that such claims for fees are not chargeable against the fine and forfeiture fund of your county. Section 4039, Code of Alabama, 1923, as amended by an Act of the Legislature, 1927, approved February 18, 1928 (General Acts, 1927, page 45), specifically points out what claims are payable out of the fine and forfeiture fund of the county and is as follows:

"1. That Section 4039 of the Code of 1923 be and hereby is, amended so as to read as follows, to-wit: Whenever there shall be a surplus of the fund arising from fines and forfeitures in the county treasury of any county, over and above the sum required to pay the registered claims of the State witnesses, the County Treasurer of such County must pay the fees of the officers of the Court arising from criminal cases in which the defendant is not convicted and the costs are not imposed on the prosecutor, or in which defendants have been convicted, and have been proved insolvent by the return of executions "no property found," or in cases in which the State enters a nolle prosequi, or where the indictment has been withdrawn and filed, or the prosecution abated by the death of the defendant, unless the payment or distribution of such funds are otherwise provided for. This section shall be held to apply to all fees of officers of the trial court arising on an appeal by the defendant to the Supreme Court or the Court of Appeals, in cases where the judgment of the trial court is reversed and a new trial allowed, or the defendant ordered discharged. It shall also apply in appealed cases, where the defendant has appealed from a conviction and sentenced to the State penitentiary, and the conviction is affirmed, to such part of the fees of the officers of the trial court, arising on the appeal, as are not paid from the convict fund under Sections 3667 and 3668 of the Code, an execution for such unpaid part of such fees having first been issued against the defendant and returned "no property found." It shall further apply to the fees of the officers of the trial court, arising on an appeal, in cases where the defendant has appealed from a conviction, the punishment fixed being otherwise than imprisonment in the State penitentiary, and the judgment of the trial court is affirmed, provided the defendant be first proved insolvent by the return of the execution "no property found."

The expression "officers of the Court" in the above refers to officers of the Court where the case is disposed of and to no other. A Notary Pulic and ex-officio Justice of the Peace nor a Justice of the Peace is not an officer of the county or circuit court simply from the fact that he is permitted by statute to make certain cases returnable to the county court.

Section 3734, Code of Alabama 1923, is as follows:

"No fee charged unless expressly authorized.—The law of costs must be deemed and held a penal law, and no fee must be taken but in cases expressly provided by law. The fees prescribed in this Code shall be the only fees that can be collected by any officer."

It is plain from the above than an officer making claim to any fee must be able to point to some direct statute authorizing the payment.

Troup vs. Morgan County, 109 Ala. 162 (19 So. 503).

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 17, 1928.

Probate Judge of Geneva County,
Geneva, Alabama.
Dear Sir:

Deed Tax; Persons offering deed for record cannot be heard to contradict amount in face of deed—must pay deed tax.

Opinion of Assistant Attorney General Smith.

I have your letter in which you state the following facts:

"On Nov. 14, 1925, the Register in the Circuit Court of Equity, of this County sold for division, for the heirs of I. Hinson a certain tract or parcel of land, which said deed was executed by the Register in Circut Court in Equity to Marion Brown, and recorded Nov. 14, 1925, paying at that time the deed tax, later it developed that there was an error in the description of the lands intended to be conveyed; today, Marion Brown, same grantee, offers for record a deed correcting the description but objects to paying the deed tax on the ground that the deed offered is a deed of correction, however it does not set out in the face of the deed that it is a deed of correction, but there is no question but what it is correcting that certain deed executed Nov. 14, 1925."

Upon this statement of facts you request the opinion of the Attorney General on the following question:

Shall I collect a deed tax on the last named deed?

I am of the opinion that if the deed is a warranty deed, and it does not

show in said deed that it is given for the purpose of correcting the description of a former deed which has been recorded and the deed tax paid, the person offering it for record cannot be heard to contradict what the deed declares and the value of the whole property or interest in such property which said deed purports to convey. However, should said deed on its face show that it is given for the purpose of correcting the description to real property previously conveyed and is for the purpose of perfecting the title, then I am of the opinion that the deed tax should not be collected, this matter is fully covered in Section 21½ of the Revenue Laws of 1927, page 163, Acts of Legislature, 1927.

Opinion of Attorney General, Vol. 2, page 205.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 17, 1928.

The Tax Collector,
Montgomery, Montgomery County, Alabama.
Dear Sir:

Stockholders of corporation not liable for taxes of corporation unless they received the assets of said corporation.

Written by Assistant Attorney General Smith.

I have your letter of March 23rd, 1928, in which you state that:

"In about October, 1926, Kaufman-Stern Specialty Company, a corporation organized and existing under the laws of Alabama, returned for taxation certain property in Montgomery County, Alabama. The tax on this property was due and payable on October 1st, 1927.

"On June 4th, 1927, the stock of merchandise, fixtures, etc., owned by the said Kaufman-Stern Specialty Company was entirely destroyed by fire. Subsequently the said Kaufman-Stern Specialty Company collected all of the insurance that it had on said stock of goods, etc., and this money was paid to certain of its creditors.

"The said corporation now represents to me that the corporation has no money or assets with which to pay the said tax which was due on October 1, 1927."

Upon this statement of facts you request the opinion of the Attorney General on the following question:

Have I, as Tax Collector, any remedy against the stockholders of Kaufman-Stern Specialty Company for the collection of the unpaid taxes?

I am of the opinion that if the stockholders collected the money from the insurance companies and paid it to their bona fide creditors you would have no recourse against the stockholders for the collection of the taxes, but if the

stockholders received and distributed all or any part of its assets among themselves, they would be liable for the amount received by each stockholder.

Adams v. Perryman, 202 Ala. 469.

Opinions of the Attorney General, 1920-22, page 206.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 18, 1928.

The Judge of Probate,
DeKalb County,
Fort Payne, Alabama.
Dear Sir:

Deeds to the State or to its governmental instrumentalities do not require payment of filing tax.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of August 15th is acknowledged. You state that you have received for record four deeds to the Alabama Polytechnic Institute for lands for establishment by said Institute for a sub-agricultural station. You wish to know if a filing tax on each of said deeds is required to be paid under Section 21½ of Revenue Act, 1927, Acts, 1927, page 163.

In reply will say that the Alabama Polytechnic Institute is a governmental instrumentality of the State.—Cox v. University of Alabama, 161 Ala. 639. The State is never presumed to intend, through its legislative Acts, to tax itself. I, therefore, advise that no filing tax is required for such deeds.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 18, 1928.

Chief Examiner,
Department of Examiners of Accounts,
Capitol.
Dear Sir:

Radio Station: Removed from Auburn to Birmingham.

Opinion by Assistant Attorney General Koonce.

I have your letter of July 24, 1928. You refer to an Act approved September 30, 1920 (General Acts, 1920, pp. 33-34), which Act provides for an annual appropriation to the Alabama Polytechnic Institute. This Act con-

tains the provision that said appropriation shall be used for the purpose of diffusing among the people of Alabama in the several counties useful and practical information on subjects relating to agriculture and home economics. You state in your letter that the Board of Trustees of the Alabama Polytechnic Institute in the discharge of their duties and responsibilities under the above named Act propose to establish a radio station for the purpose of diffusing among the people of Alabama useful and practical information relating to agriculture and home economics.

You request my opinion:

1. Are the terms of the above Act broad enough to legalize the expenditure of the appropriation made by said Act, for the purpose of establishing and operating such a radio station?

2. If said appropriation can be used to establish a radio station can it be established in Birmingham or at any other point which the Board of Trustees may find most efficient and effective?

3. If said appropriation can be used to establish a radio station, can the Board of Trustees purchase land upon which to establish such station?

In my opinion the appropriation referred to above can be used for the purpose of establishing a radio station at Birmingham or at any other point in Alabama which the committee appointed by the Board of Trustees may deem advisable.

In my opinion the Board of Trustees is authorized to purchase land upon which to establish such station.

Section 538, Alabama School Code, 1927, appropriates certain money to the Alabama Polytechnic Institute. Said Act provides that said appropriation shall be used to aid in diffusing among the people of Alabama useful and practical information on subjects relating to agricultural and home economics, etc.

Section 539, Alabama School Code, 1927, provides that the appropriation referred to in Section 538, supra, shall be expended under the direction of the Board of Trustees of the Alabama Polytechnic Institute. Said Section 539 contains the following:

"These sums shall be expended under the direction of the Board of Trustees of the Alabama Polytechnic Institute, which Board of Trustees shall appoint a committee of three men with the Governor of the State as chairman **and the said committee shall direct the extension service of said institute in the expenditure of all moneys,** etc."

Legislative intent is the guide to be used in construing statutes or acts passed by the Legislature.

It seems to be clear that the Legislature intended by the enactment of Sections 538 and 539, supra, to give the committee referred to therein, the authority to expend the sums mentioned, in whatever manner the committee thought would best effect the purposes for which the Act was passed.

My predecessor rendered an opinion to Mr. H. Herzfeld on August 21, 1923 (Vol 2, Op., 1925, page 184), in which he held that the Board of Trustees of the Alabama Polytechnic Institute could appoint a committee to expend the annual appropriation referred to above, and that said committee had a large discretion in determing whether or not a proposed expenditure is relevant to the putting into effect of the purposes stated in the Act making the appropriation.

Of course if the committee has authority to use the appropriation to establish a radio station and finds it necessary to purchase land upon which to establish said station, it can do so, because the authority to establish the station would include the authority to do all things necessary for its establishment.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 18, 1928.

State Prison Inspector,
Montgomery, Alabama.
Dear Sir:

Paupers.—Care of.

Opinion by Assistant Attorney General Rayburn.

I have your letter of June 20th, 1928. You state that you have been asked by the Chairman of the County Court of Commissioners of Greene County, whether or not said County can enter into a contract with Tuscaloosa County, for the care of paupers from Greene County.

You request my opinion:

> Can Greene County legally enter into a contract with Tuscaloosa County, for the care of paupers from Greene County?

It is my opinion that such a contract may be entered into, under certain conditions, viz.:

1st. That the Court of County Commissioners or Board of Revenue of Greene County, at a regular meeting, or at a special meeting called for that purpose, adopt a resolution by a majority vote of all the members of said governing body to the effect that said County unite with Tuscaloosa County, in the control and operation of a home for the poor.

2nd. Said resolution must be recorded.

3. A member of said governing body must be elected to serve on the board of supervisors of said home.

4th. Said contract may be legally entered into by said counties for the following purpose, and for no other, viz.: "Uniting in the establishment and operation of a joint home for the care of the indigents of the respective counties participating."

An Act, approved September 9th, 1927 (General Acts, 1927, page 521),

provides that counties within certain districts may, in the discretion of said counties composing said districts, unite for the purpose of caring for the indigents of said counties. By said Act Greene County and Tuscaloosa County are placed in District No. Four

Section 2, of the Act, supra.

In view of this Section, Greene County and Tuscaloosa County, may legally enter into a contract for the purpose, and in the manner prescribed in said Act.

The pertinent portion of the Act here considered, reads as follows:

"Sec. 2. * * * Provided, that nothing in this section shall prevent the Courts of County Commissioners, or Board of Revenue, of two or more counties of a given district, as hereinafter provided for, from uniting in the establishment and operation of a joint home for the care of the indigent of the respective counties participating, and to this end the State is divided into Districts as follows: * * * District Number Four: * * * Greene, * * * Tuscaloosa."

You do not state specifically the nature of the contract in contemplation. The legality of such a contract would necessarily depend upon the nature of the obligations to be assumed by these two counties. Certainly, a contract could not legally be entered into which would offend, or be in any way contrary to, the provisions of the Act herein discussed.

From your statement, I infer that Greene County proposes to pay Tuscaloosa County a certain sum in consideration of the last named county's caring for the indigent persons of Greene County, and that the said Greene County does not propose to assume any obligation in the matter of maintaining the alms house, which is operated by Tuscaloosa County. Assuming that I am correct in my analysis of the contract in contemplation, Greene County could not legally enter into such relations with Tuscaloosa County This is for the reason that the Act here considered, in my opinion, does not authorize the "farming out" of indigent persons.

The Act here considered is not mandatory upon the county governing bodies, but when a county undertakes to operate under the provisions of said Act, said county must comply with all of the terms and provisions named therein.

The two counties named by you may legally assume contractual relations by uniting either in setting up, establishing or operating a joint home for the care of the indigents of the two contracting counties. That is to say, each county, after entering into such relations, must continue to supervise, and look after, the method and manner of handling the paupers of the respective counties.

Opinions of Attorney General, 1928, Vol. 5, page 32 (Office Edition).

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 20, 1928.

The Judge of Probate,
Russell County,
Seale, Alabama.

Dear Sir:

License tax on operating slot machine. Schedule 73, of Section 361, Revenue Act, 1919.

Opinion by Assistant Attorney General Evans.

Your letter of August 17th to hand. You wish to know whether or not you should issue license to any one to operate a slot machine or vending machine.

In reply will say that if any one applies for a license as provided for under Schedule 73, of Section 361, of Revenue Act, 1919, Acts, 1919, page 423, you should issue the license on payment of the price there named. If, however, the slot machine is a gambling device, no license will authorize the operation of it. What is strictly a slot vending machine, with no element of chance, requires a license as provided by said Schedule 72. If the slot machine operates with an element of chance, the person operating it violates Section 4248 of the Code, 1923, and should be prosecuted as there provided. Such a person is not entitled to operate such a machine by taking out license under said Schedule 73. Hence such person could not be required to take out license for operating such machine. He is simply a law violator and should be prosecuted for a violation of said Section 4248 of the Code.

License is required for operating a slot machine that can be legally operated; but not for operating such a slot machine as is prohibited by Section 4248.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 20, 1928.

Director, Child Welfare Department,
State Capitol,
Montgomery, Alabama.

Dear Madam:

Construction of statute: Adoption of child carries custody.

Opinion by Assistant Attorney General Knight.

This is to acknowledge the receipt of your letter of August 18th.

You inquire whether or not the adoption of a child, pursuant to statute, carries with it the right to custody.

Where one legally adopts a child one is entitled to the custody and earnings of the child against all persons, unless it be non-consenting parents.

The right of custody of a parent by adoption is in nowise conclusive as against any decree which may be rendered by a court of chancery which exercises an inherent protective power over all minor children within the jurisdiction of the court.

Lee vs. Lee, 55 Ala. 590, 595, 599.

Nor is the adopted parent's right to custody conclusive as against natural parents not consenting to the adoption.

Tilley vs. Harrison, 91 Ala. 295.

Considering the reasoning of the authorities hereinbefore referred to and other authorities on the subject, it can not be doubted but that any other court, by statute invested with a general supervisory jurisdiction of minors is in nowise concluded by the statutory adoption of a minor.

Adoption proceedings are purely ex parte and can have no force or effect as a decree amounting to res adjudicata.

Prince vs. Prince, 188 Ala. 559.

However, the sum tenor of all our decisions announces the rule that statutory adoption is conclusive against persons seeking the custody of an infant except non-consenting parents and such custody is subject to such interference as a court of chancery or a court of statutory jurisdiction in the premises, may interpose.

Murphree vs. Hanson, 197 Ala. 247.

While not necessary to a decision of the question here presented it may be well to observe that when the custody of a minor becomes involved in litigation the paramount issue before court is the welfare of the child. Rights of the petitioner and of the respondents become matters of secondary importance.

Montgomery vs. Hughes, 4 Ala. App. 245.

Though adoption may not, by operation of statute establish and originate all the legal consequences and incidents of the natural relation of parent and child, when the adoptive father declares his own name as the name he wishes the child to bear and takes it into his family to be treated as a child, he assumes the duty of a natural parent, and is entitled to its custody and services, as against all persons, unless it may be the true parents when they have not consented to the adoption.

Cofer vs. Harrison, 98 Ala. 342.

Buttrey vs. West, 212 Ala. 321.

When the State Child Welfare Department consents to the adoption of a minor under its supervision it relinquishes its right to the custody of such minor and its direct responsibility, after legal adoption, ceases. Of course should the child become neglected by the foster parents the department has

the same powers it had in the first instance, that is, in its original cognizance of such cases.

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 21, 1928.

Hon. John Brandon,
Secretary of State,
Capitol.

Dear Sir:

Meaning of words "paid capital stock" in Section 43 of Revenue Act, 1927, Acts, 1927, page 173.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of August 10, 1928 is acknowledged. You wish to know the meaning of the words "paid capital stock" as used in Section 43, of Revenue Act, 1927, Acts, 1927, page 173.

In reply will say that the words as there used mean that part of the capital stock of a corporation which has been paid and does not include that part of the capital stock which has not been paid, but is subject to call of the Board of Directors. "The capital stock of a corporation is the sum fixed by the corporate charter as the amount paid in or to be paid in, by the stockholders for the prosecution of the business of the corporation, and is a trust fund for the benefit and security of the creditors of the corporation."—Commercial Fire Insurance Co. vs. Board of Revenue of Montgomery County, 99 Ala. 1. The amount paid in constitutes the "paid capital stock"; the amount not paid in, but subject to the call of the Board of Directors, constitute no part of the "paid capital stock." When called in by the Board of Directors such part also becomes "paid capital stock."

Yours very truly,
CHARLIE C. McCALL,
Attorney General.

August 22, 1928.

The State Tax Commission,
Capitol.

Dear Sirs:

Construction of Act No. 62, Acts, 1923, page 36 and of Act No. 3, Acts, 1927, page 790, as amended by Act No. 340, Acts, 1927, page 326, as applied to sales of gasoline to United States.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of June 1st, 1928, is hereby acknowledged. You

wish to know if, in view of the decision of the United States Supreme Court, in the case of the Panhadle Oil Co. vs. The State of Mississippi, Supreme Court Reporter, Vol. 48, page 451 et seq., the opinion rendered by Hon. Harwell G. Davis, former Attorney General, of date June 13th, 1923, upholding the right of the State of Alabama to collect gasoline tax provided for by Act No. 62, Acts, 1923, page 36, et seq., when gasoline is sold to an instrumentality of the Government of the United States, is tenable. In other words, is the method of taxation, as applied to gasoline, in this State, so materially different from that of the State of Mississippi that the tax may be collected when gasoline is sold in this State to the United States Government, while the tax provided by the law of the State of Mississippi may not be collected, because it conflicts with the Constitution of the United States.

In reply will say that the reasons given in said opinion by the Supreme Court of the United States for the unconstitutionality of the Mississippi law, as applied to sales of gasoline to the United States by a distributor, apply with equal force to the statutes of the State of Alabama, whether the Act of 1923, or that of 1923, as amended Acts, 1927, page 326, et seq.

The tax levied by the State of Alabama, as far as necessary here to quote, is as follows:

> "Section 3. (a). Every distributor, retail dealer or storer of gasoline as herein defined shall pay an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage, for any use, gasoline as defined in this state; provided, however, that this excise tax shall not be levied upon the sale of gasoline in interstate commerce; and provided, further, that where the excise tax of two cents per gallon upon the sale of such gasoline shall have been paid by a distributor or by a retail dealer or storer such payment shall be sufficient, the intention being that the tax shall not be paid but once."—Acts, 1927, page 327.

The part of the Mississippi law quoted in the opinion of the Supreme Court of the United States, and upon the effect of which the opinion is based, reads as follows:

> "Any person engaged in the business of distributing gasoline, or retail dealer in gasoline, shall pay for the privilege of engaging in such business an excise tax of 1 cent per gallon upon the sale of gasoline * * * except that sold in interstate commerce or purchased outside of the State and brought in by the consumer for his own use."

The reason given by the Supreme Court of the United States why such Mississippi tax could not be made to apply to sales made by a distributor or retail dealer to the United States are as follows:

The sale was made by a Mississippi dealer to the United States for the use of its Coast Guard Fleet in service of the Gulf of Mexico and its Veterans' Hospital at Gulfport. The Supreme Court, in said opinion, says:

> "The United States is empowered by the Constitution to maintain and operate the fleet and hospital. That authorization and laws enacted

pursuant thereto are supreme, and in case of conflict, they control state enactment."

"The states may not burden or interfere with the exertion of national power or make it a source of revenue or take the funds raised or tax the means used for the performance of federal functions."

"The right of the United States to make such purchases is derived from the Constitution. The petitioner's right to make sales to the United States was not given by the State and does not depend on the State laws; it results from the authority of the national government under the Constitution to choose its own means and sources of supply. While Mississippi may impose charges upon petitioner for the privilege of carrying on trade that is subject to the power of the state, it may not levy a tax upon transactions by which the United States secures the things desired for its governmental purposes."

"The validity of the taxes claimed is to be determined by the practical effect of enforcement in respect of sales to the government. A charge at the prescribed rate is made on account of every gallon acquired by the United States. It is immaterial that the seller and not the purchaser is required to report and make payment to the State. Sale and purchase constitute a transaction by which the tax is measured and on which the burden rests."

"The amount of money claimed by the State rises and falls precisely as does the quantity of gasoline so secured by the government. It depends immediately upon the number of gallons. The necessary operation of these enactments when so construed is directly to retard, impede and burden the exertion by the United States of its constitutional powers to operate the fleet and hospital. To use the number of gallons sold the United States as a measure of the privilege tax is, in substance and legal effect, to tax the sale. And that is to tax the United States—to exact tribute on its transactions and apply the same to the support of the State.

"The exactions demanded from petitioner infringe its right to have the constitutional independence of the United States in respect of such purchases remain untrammeled."

In the above quotations from the opinion by the Supreme Court of the United States, I have omitted citations of opinions therein used as being unnecessary for the purpose at hand.

The tax levied by the State of Alabama is "an excise tax of two cents per gallon upon the selling, distributing or withdrawing from storage for any use." The tax levied by the State of Mississippi is that "any person engaged in the business of distributing gasoline or retail dealer in gasoline shall pay for the privilege of engaging in such business an excise tax of one cent per gallon upon the sale of gasoline."

It is quite evident, when the reasons given by the United States Supreme Court are considered, that such reasons are as applicable to the Alabama law as to the Mississippi law. When a sale is made by a distributor, retail dealer or storer of gasoline to the United States, whether in Alabama or Mississippi,

no tax can be collected on such sale from either the seller or purchaser, and no tax can be exacted of the seller measured by the number of gallons of gasoline so sold.

Mississippi taxes the business with a tax measured by the number of gallons sold, while Alabama taxes the sale of each gallon sold at two cents per gallon. Alabama also taxes the distributing or withdrawing from storage for any use. It taxes but once, and where there is a sale, the tax is on the sale. Where there is no sale, but a distribution or withdrawing from storage for some use, other than selling, there is a tax on such withdrawal or distribution. We are not here considering such withdrawals, but only sales to the United States.

If the sale, in any case, is not, in effect, a sale to the United States, then, the reasons given in said opinion do not apply and the tax should be collected, unless exempt for some other reason.

When a distributor, retail dealer or storer of gasoline claims a reduction in his tax by reason of some of the sales having been made to the United States, the burden is upon him to satisfy the Tax Commission that the sales, for which reduction is claimed, were in fact, or effect, to the United States.

It will be noticed from reading the excerpts of the said opinion by the Supreme Court of the United States, that said Court had to cogitate to reach the conclusion that the Mississippi tax "is, in substance and legal effect, to tax the sale," which it concludes is not admissible on sales to the United States. The Alabama tax is, in its very words, a tax upon the sale, where sales are made; while Attorney General Davis had to cogitate to reach the conclusion that the Alabama tax "is a privilege or license tax for engaging in the business of selling gasoline." In other words the Supreme Court of the United States construed the Mississippi law to mean exactly what is stated in the Alabama law, while Mr. Davis construed the Alabama law to mean exactly what is stated in the Mississippi law. The Supreme Court of the United States held that while the Mississippi statute purports to be a privilege tax for engaging in the business of selling gasoline, it "is, in substance and legal effect, to tax the sale." On the other hand Mr. Davis held that while the Alabama law purports to be a tax on the sale of gasoline, it is, in substance and legal effect, a privilege tax for engaging in the business of selling gasoline, and for that reason it does not matter to whom the gasoline is sold.

Both laws are, in effect, the same when applied to sales to the United States.

I, therefore, conclude that the said opinion handed down by the Supreme Court of the United States is in conflict with the opinion given by Hon. Harwell G. Davis of date June 13th, 1923, to Hon. F. C. Marquis, Associate Member, State Tax Commission, and that said opinion by the former Attorney General is no longer tenable.

In this opinion I have quoted from and discussed the Alabama Act of 1927, as the Act of 1923, the Act construed by Mr. Davis, is plainly a tax on the sale of gasoline and nothing more or less.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 24, 1928.

The Judge of Probate,
Butler County,
Greenville, Alabama.
Dear Sir:

Schedule 75 of Section 361 of the Revenue Act, 1919.
Opinion by Assistant Attorney General Evans.

Receipt of your letter of August 14th is acknowledged. You state that Peagler's Drug Store of your city sells a few magazines and periodicals more for accommodation than for profits. You wish to know if it is required to take out license under Schedule 75 of Section 361 of Revenue Act, 1919.

In reply will say that if Peagler's Drug Store operates a news stand for the sale of newspapers, magazines and periodicals, it must, if it is a corporation, take out a license. If it is operated by an individual in the name of Peagler's Drug Store, then the individual should take out a license in his own name and not in that of Peagler's Drug Store.

It is immaterial what other business, or how big such business is or how little the newspaper and magazine business is, or whether done for accommodation or for profit, if, in fact, a news stand is operated for sale of newspapers and magazines, then such operator must take out license under said Schedule 75. If, on the other hand, no such news stand is operated, then, of course, no license is required under said Schedule 75.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 24, 1928.

Planters and Merchants Bank,
County Depository for Dale County,
Ozark, Alabama.
Dear Sir:

Road Tax in lieu of labor—must be applied to roads in precinct where collected, accounts of collections and disbursements must be kept by precincts.

Opinion by Assistant Attorney General Smith.

I have your letter of August 18, 1928, in which you state the Court of County Commissioners of Dale County, acting under authority of Section 172 of the Highway Act passed at the 1927 session of the Legislature and approved August 23, 1927, has passed a resolution accepting $5.00 per annum, in lieu of labor required by law upon public roads. Upon this statement of facts you request an opinion on the followig question:

Whether your bank as county depository should place this per capita road tax money to the credit of the general road funds, and permit the commissioner's court to check this found out as the roads, are respectively, worked and improved during the year, or should this road tax money

be kept in separate accounts and expended on the roads in the precinct and on the roads where the payer is apportioned or resides.

In answering your question it is necessary to construe Section 174 of the Act above referred to by you which is as follows:

"Application of Per Capita or Commutation Tax. The commissioners courts, boards of revenue, or like governing bodies shall apply the per capita tax collected in lieu of labor, in the road precinct and on the road where the payer is apportioned or resides. When the State takes over any road in any county for improvement and maintenance, the provisions of the two preceding sections shall not apply as upon the road or roads so taken over by the State but all labor or funds so obtained as provided in Section 172 and Section 173 shall be directed upon the remaining precinct roads of such counties, or if there be no such roads within the precinct then such labor and money shall be employed or expended as directed by the county commissioners, board of revenue or like governing bodies."

I am of the opinion that the above quoted section does not specifically provide that this tax should be kept in a separate account, but the section clearly means that the per capita tax collected in lieu of labor shall be applied on the roads in the road precinct and on the roads where the payer is apportioned. The tax being required to be expended on the roads in the precinct in which it is collected would necessarily require the keeping of a separate account by precinct as to the collections and disbursments of said funds.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 24, 1928.

Judge of Probate,
Henry County,
Abbeville, Alabama.

Dear Sir:

Courts of County Commissioners have control over all county property.—Their duty to repair courthouse and jail. May use general funds of county. May make loan in anticipation of taxes for said purpose.

Opinion by Assistant Attorney General Smith.

I have your letter of July 21, 1928, in which you request the opinion of the Attorney General on the following questions of law:

1. Whether a Court of County Commissioners is the sole judge to determine needed additions or repairs, or either, to the county courthouse.
2. Is such Court authorized to pay for such improvement from either or both, the general fund or the special fund or cash on hand or interest bearing warrants.

Answering your first question I am of the opinion that Section 210 of the Code of Alabama, 1923, amply covers this matter, and is as follows:

"County Buildings Erected and Repaired by County.—The county buildings are to be erected and kept in order and repair at the expense of the county, under the direction of the court of county commissioners, which court is authorized to make all necessary contracts for that purpose."

Under the above quoted section the Court of County Commissioners has control of all the property of the county. A duty resting upon them is the erection and keeping in repair the courthouse and jail; and for these purposes they may make all necessary contracts.

Jacks v. Moore, 66 Ala. 188.
Weeks v. Bynum, et al., 158 Ala. 231.
White, et al., vs. Hewlett, 143 Ala. 374.

Answering your second question I am of the opinion that should a Court of County Commissioners make a contract for the repairs or addition to a courthouse or jail they would have authority to pay for same from the general funds of the county after payment of preferred claims enumerated in Section 231 of the Code of 1923, but no claim growing out of a contract for repairs or additions to a courthouse or jail can be paid out of any fund voted by the people of a county for a special purpose.

However, should the Court of County Commissioners not have sufficient money in the general fund to pay for the necessary repairs or additions to the courthouse or jail, the county may make loans in anticipation of taxes as provided in Section 239 and 240 of the Code of 1923, these sections do not restrict your board as to how such money shall be expended, and I take it that the board can spend it for general purposes as allowed by law.

In this connection I wish to call your attention to Section 217 of the Code of 1923, which provides another method of raising funds for building or repairing courthouses and jails, which is as follows:

"Special Tax for Courthouse or Jail; Disposition of Surplus.—Whenever it shall be deemed necessary by the court of county commissioners of any county in this state to pay any debt or liability now existing against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges, or roads, such court shall have the power and authority to levy and collect a special tax upon the taxable property of such county, not to exceed in one year one-fourth of one per cent for such purposes; and such tax, when collected, shall be applied exclusively for the purposes for which the same was so levied and collected."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 25, 1928.

The Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Dear Sir:

License—Automobile Dealers.

Opinion by Attorney General McCall.

I have your letter of August 23rd. I assume that an automobile dealer who has paid a license in another county to sell automobiles, and has not paid a license in Montgomery County for the same purpose, is selling automobiles in Montgomery County.

You request my opinion:

> "Is an automobile dealer required to pay a license in every county where he sells, or attempts to sell automobiles, or is said dealer only required to pay a license in counties where he has an established place of business?"

In my opinion a license is required in each county operated in, of each and every agent of and dealer in, and each person soliciting orders for the sale or purchase of automobiles, motor cars, or other self-propelling vehicles, except motorcycles, and except any person legally employed by a said agent of and dealer in same, which said agent of and dealer in, has paid the privilege tax or license provided for in Section 18½ of Act approved July 22nd, 1927 (General Acts, 1927, p. 160).

Subsection 10 of Section 1 of Act approved September 14, 1915 (General Acts 1915,, p. 494), provided such a license or privilege tax. Schedule 10 of Section 361, of the Act approved September 15, 1919 (General Acts 1919, p. 401), is a re-enactment of said Schedule 10 of the Act of 1915, supra, with the exception of a change in the population basis for the twenty-five dollars license, and with the exception that there is added to the Act of 1919 the following expression:

> "* * * but such license shall not authorize such agent or dealer to do business in any other county than that in which the license is issued. Provided, however, that if such agent or dealer shall do business in any other county than that in which is located his principal place of business, he shall pay one-half of the license required of such dealers in such county in addition."

No doubt the additional language in Schedule 10 of Section 361, of the Act of 1919, was placed there because of the decisions of the Court of Appeals of Alabama in Patterson v. State, 16 Ala. Appeals 483, which decision of said Court of Appeals constituted an interpretation of Subsection 10, of Section 1, of the Act of 1915.

Section 18½ of an Act approved July 22, 1927 (General Acts, 1927, p. 160), constitutes the present prevailing license or privilege tax required of agents or dealers in automobiles. It is a re-enactment of Subsection 10, of Section 1, of the Act of 1915, and by the last sentence repeals specifically

Schedule 10 of Section 361 of the Act of 1919. No such language as that hereinbefore quoted from Schedule 10 of Section 361 of the Act of 1919, is contained in said Section 18½ of the Act of 1927, and it is contended that, in view of the fact that the Court of Appeals of Alabama in the case, supra, has ruled upon the Act of 1915, and the same having in fact been re-enacted in 1927, the decision of said Court, and its interpretation of the language of the Act of 1915, applies to Section 18½ of the Act of 1927, and that, therefore, under said Section 18½ of the Act of 1927, an automobile dealer is not required to take out a license, paying a prescribed fee therefor, for every county in which he solicits orders for cars, but is merely required to take out one state and county license, to be taken out in the dealer's home county.

I do not agree with the interpretation in Patterson v. State, supra, which in my judgment, failed to analyze sufficiently the language of the statute under consideration, and in view of Section 363 of the Act approved September 15, 1919 (General Acts, 1919, p. 440), and the long line of opinions by this office on other license schedules of a similar nature, and because the matter has not been passed by the highest Court of the State, I do not feel that this office is bound by said opinion in Patterson v. State. The matter is of such grave importance to the State from the standpoint of revenue that I feel a test case should be made in the way of a civil proceeding, and that the matter should be passed upon by the Supreme Court of Alabama.

Until that time I am of the opinion that under said Section 18½ of the Act approved July 22, 1927 (General Acts, 1927, p. 160) a license or privilege tax is required to be paid in accordance with the schedule therein set forth, in every county of the State operated in, according to the population basis specified, by each and every agent of and dealer in, and by each person soliciting orders for the sale or purchase of automobiles, motor cars or other self-propelling vehicles, except motorcycles, and except any person legally employed by a said agent of or dealer in, which said agent of or dealer in has paid privilege tax or license provided in said Section 18½.

I shall be glad, upon agreement with interested parties, to institute a test civil proceeding on this matter, and have same finally determined by the Supreme Court of Alabama. Unless and until there be a decision by that Court contrary to this opinion, I suggest the collection of the license or privilege tax in the manner herein construed.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 29, 1928.

Hon. E. Raymond Murphy,
County Solicitor, Lauderdale County,
Florence, Alabama.

Dear Sir:

Sections 15 and 16 of Revenue Act, 1927, are not modified by Schedule 5 of Section 361 of Revenue Act, 1919.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of August 25th, is acknowledged. You wish my construction of Section 15 and Section 16 of the Revenue Act, 1927, Acts 1927, page 156, as affected by Schedule 5 of Section 361 of the Revenue Act, 1919, Acts 1919, page 397.

In reply will say that, in my opinion, neither Section 15 nor Section 16 is in any way affected by said Schedule 5 of the Revenue Act, 1919. There are no qualifications in either Section 15 or Section 16 of the Revenue Act, 1927, except the following: in Section 15, "Provided, that the provisions of this section shall not apply to any street fair or carnival operated by or under the auspices of State Fairs, County Fairs, or District Fairs," and in Section 16, "Provided, that this section shall not apply to any show operating in a theatre regularly licensed." If Schedule 5 of Section 261 of the Revenue Act, 1927, in any way conflicts with any of the provisions of either Section 15 or Section 16 of the Revenue Act, 1927, it is repealed just to that extent. The last Act controls, in its entirety, and cannot be construed as being modified by a prior Act, unless it specifically so provides. No such provision can be found in the Revenue Act, 1927.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 30, 1928.

State Tax Commission,
Capitol.

Dear Sir:

Schedule 120 of Section 361 of Revenue Act, 1919, Acts 1919, page 437, has no application to the business of cleaning and blocking hats.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of this date is acknowledged. You wish to know if the business of cleaning and blocking hats requires a license under Schedule 120 of Section 361 of Revenue Act, 1919.

In reply will say that in my opinion the business of cleaning and blocking hats was not intended to be included in said Schedule 120.

This schedule reads as follows:

"Schedule 120. Pressing Club.—Each person, firm, or corporation conducting what is commonly known as a cleaning or pressing business,

or pressing club, where wearing apparel is cleaned, pressed, or dyed, shall pay a license of five dollars in cities and towns of less than ten thousand inhabitants; in cities and towns of ten thousand and less than fifty thousand inhabitants, ten dollars; in cities and towns of fifty thousand inhabitants or more, fifteen dollars."

In my opinion, as a matter of fact, hat cleaners are not commonly known as cleaning or pressing business, or pressing club.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

August 31, 1928.

Hon. John Brandon,
Secretary of State,
Capitol.
Dear Sir:

Construction of Sections 42 and 43 of Revenue Act, 1927, Acts 1927, p. 171 et seq.

Opinion by Assistant Attorney General Evans.

Your letter of prior date is acknowledged. You wish my construction of Sections 42 and 43 of the Revenue Act, 1927 (Acts 1927, p. 171, et seq.) as to when payment of permit fees provided for thereby become due and payable.

In reply will say that by the provisions of Section 80 of said Revenue Act both said Section 42 and Section 43 went into effect October 1, 1927, if a foreign corporation qualified to do business in this State, it was due to pay the permit fee when it was admitted or qualified to do business for the then current calendar year, and annually thereafter on or before the first day of February of each calendar year. For instance, a foreign corporation qualified to do business in Alabama at some time in October, November or December, 1927, it was required to pay the permit fee when it was admitted for the then current calendar year and after that a permit fee on or before the first day of February of each subsequent calendar year as long as it continues to be qualified to do business in the State.

As to foreign corporations already qualified to do business in the State prior to October 1, 1927, the first permit fee provided for by said Section 42 is that payable on or before February 1, 1928, for the calendar year 1928.

As to domestic corporations, those incorporated prior to October 1, 1927, the first permit fee required by said Section 43, is that payable on or before February 1, 1928, for the calendar year 1928; those incorporated at any time during the months of October, November or December, 1927, were due a permit fee when incorporated for the then current calendar year, 1927, and another permit fee annually thereafter on or before the first day of February of each year for the then current calendar year. Such permit fees are due and payable on January 1st of each year and delinquent on February 2nd of each year.

No matter at what time of year a domestic corporation is organized it is then due a permit fee for the year in which it is organized.

The foregoing opinion is not written upon the theory of what the law ought to be, but upon the fact of what it is. Neither this office, nor the courts of the State, have any inherent power of legislation. For foreign corporations, only two times for payment of permit is provided—one, when it qualifies to do business in the State and the other annually thereafter on or before the first day of February of each calendar year. For domestic corporations, only two times for payment of permit fee is provided—one, when the corporation is organized and the other on or before the first day of February of each calendar year thereafter. Since there is no provision in the said Act of 1927 requiring either domestic or foreign corporations already in the state on October 1, 1927, to pay the permit fee under said Act for the calendar year, 1927, I am not authorized to supply the legislative omissions.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 4, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Capitol.

Dear Sir:

Publication of Governor's Proclamation as provided by Section 284 of the Constitution of Alabama, may, under existing statutes, be paid for out of the general fund in the treasury after exhaustion of the special appropriation provided by Subdivision 10 of Section 17 of Act 584, Acts 1927, page 686.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of August 28th is acknowledged. You state that at the coming election to be held in November there are to be submitted to the qualified electors of the State, as provided by the Acts of the last session of the Legislature, six amendments to the Constitution of the State of Alabama. By Section 284 of the Constitution of the State of Alabama, it is provided that, "Notice of such election, together with the proposed amendment shall be given by proclamation of the Governor, which shall be published in every county in such manner as the Legislature shall direct, for at least eight successive weeks next preceding the day appointed for such election." You further state that appropriation in Section 17 of the General Appropriation Act by Subdivision 10 thereof, Acts 1927, page 686, to pay for publication of proclamations made by the Governor, has been exhausted. You ask to know if, in my opinion, the cost of publication of the necessary proclamations by the Governor for said amendments prior to the election can be paid for out of the general funds in the treasury not otherwise appropriated.

Section 72 of the Constitution of Alabama provides that "no money shall

be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof."

The foregoing provision has been common to all the Constitutions of this State. The meaning and purpose of said constitutional provision had been construed by our Supreme Court prior to the adoption of the Constitution of 1901.

In the case of Riggs v. Brewer, 64 Ala. 285, our Supreme Court says:

> "The salary being thus fixed by a general statute, no special appropriation by the general assembly was necessary to entitle him to demand payment of it, nor to authorize the auditor to draw a warrant on the treasurer for its payment. The statute of itself, operated as an appropriation, and satisfied the constitutional requirements that money shall be drawn from the treasury only upon appropriations made by law."

Nichols v. Comptroller, 4. Stew. & P. 154.
Reynolds v. Taylor, 43 Ala. 420.

A subsequent statute, merely appropriating a less sum than that fixed as the salary by the general statute, would not operate a repeal by implication of the latter.

The provisions of Section 284 of the Constitution 1901, of the State of Alabama already quoted, are clearly mandatory. It provides what notice shall be given by proclamation of the Governor and that such notice shall be published in every county in such manner as the Legislature shall direct. Section 9260 of the Code provides the manner of publication, if not specifically provided in the Act proposing the amendment; Section 9262 of the Code fixes the price to be paid for publication. When all these elements of law are provided, "It requires no special appropriation to give them effect. The special appropriation of an amount insufficient to effectuate the mandatory requirements of the Constitution does not negative the effect of the said consitutional provision and statutes in aid thereof, since no such legislative intent is anywhere expressed.

Riggs v. Brewer, 64 Ala. 282.

When said Section 284 of the Constitution, requiring publication to be made, and the statutes fixing the manner of publication and price to be paid are considered it must be inferred that appropriation from the general fund in the treasury is intended, if the special appropriation proves insufficient to carry out the constitutional mandate.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 5, 1928.

Hon. John S. Turner,
Commissioner of Maintenance,
Highway Department,
Montgomery, Alabama.

Dear Sir:

Courts which have final jurisdiction to try cases arising from violations of offenses named in subdivision (b) of Section 103 of Highway Code, 1927.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of August 21, 1928, is acknowledged. You ask who are the proper officers to try persons accused of violations of law as provided by Subdivision (b) of Section 103 of Highway Code, 1927 (General Acts, 1927, p. 389). In reply will say that county courts, circuit courts and all other courts upon which such jurisdiction has been conferred by statute, have final jurisdiction to hear and determine such cases. No such jurisdiction has been conferred upon Justices of the Peace. Justices of the Peace may, in such cases, issue warrant, where proper affidavit is made, for the arrest of persons charged with such offenses, returnable to the County or Circuit Court, or, where some other court exists having final jurisdiction, to such court. No one has authority to settle with the offender by payment of a sum of money at the time of arrest. The party arrested should be allowed bail, if he can get securities, and the case should be set for trial as early as possible. The court having final jurisdiction must determine the guilt or innocence of the defendant at the time of trial and fix the punishment by fine or imprisonment as provided by law. No other than such court has any right to collect a fine, and such court of final jurisdiction, has no such right until trial is had and judgment of conviction is entered. There is no authority of law for settling any case of misdemeanor or felony out of court, or in any manner, except as provided by law.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 6, 1928.

Commissioner of Insurance,
State Capitol,
Montgomery, Alabama.

Dear Sir:

Workmen's Compensation Act construed. Person operating grocery store, drug store, garage, filling station and hotel, and having twenty-one employees does not automatically come under Workmen's Compensation Act.

Opinion by Assistant Attorney General Smith.

I have your letter of August 31, 1928, in which you submit two statements of facts which are as follows:

"Where a man has a drug store, employs five clerks, also runs a grocery store next to the drug store in which he employs four clerks, also runs a garage, in which he employs three mechanics, also runs a filling station in which he employs three men, all of said operations are carried on on the ground floor. On the second and third floors of the same building, he runs a hotel, and in the operation of same he employs six men and three women, the three women being janitresses, or hotel domestics. This gives him a total of twenty-one employees, all of his said business undertakings being in the same building.

"Where a man operates a sawmill and employs therein thirty men. He also has a lumber yard several miles distant from his sawmill, and employs on said lumber yard twelve men, making a total number of employees of forty-two men. The sawmill and lumber yard are both run in his name, but he has a separate set of books, kept respectively, at each of said plants, and each of said plants pays off its own men. Being so far as accounting is concerned, two separate and distinct places of business."

Upon these statements of facts you request the opinion of the Attorney General on the following questions:

1. Does the employer under the first statement of facts fall automatically under the Workmen's Compensation Act?

2. Do the twelve men employed at the lumber yard, and he, as the employer, automatically fell under the Workmen's Compensation Act, taken in conjunction with the sawmills?

In answer to your first question based on your first statement of facts I am of the opinion that the employer does not fall automatically under the Workmen's Compensation Act as provided in Article 26 of the Code of Alabama, 1923, for the simple reason that the statute uses the word in **any one business.** A grocery store is a business within itself, and the legislature so considers it by providing a separate license tax thereon, so with a drug store, garage, filling station and hotel, also the employers assume a different degree of risk in connection with his employment in each business.

I do not think because all these **separate businesses** are operated in the same building and owned by the same person, and a general set of books were kept, would bring the several businesses under the Compensation Act, in view of the term "any one separate business" used in the statute.

Having reached the foregoing conclusion as to your first question, it applies to and answers your second question.

Yours truly,

CHARLIE C. McCALL,

Attorney General.

September 12, 1928.

Hon. J. M. Black,
Justice of the Peace
Ft. Deposit, Ala.
Dear Sir:

Exemption from jury duty, and exemption from street tax.

Opinion by Assistant Attorney General Knight.

This is to acknowledge receipt of your letter of August 2, 1928.

You inquire whether or not a rural mail carrier is required to pay street tax, and whether or not he is exempt from jury duty.

I find no provision of statute exempting a rural carrier from street or road tax. And without an express provision furnishing this exemption, he will be liable for street or road taxes.

A rural carrier is exempt from jury duty.

General Acts 1927, p. 76.
Act approved Feb. 21, 1927.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 12, 1928.

Hon. Fred Stephens,
Member of Jury Commission, DeKalb County,
Fort Payne, Alabama.
Dear Sir:

Time to be consumed and pay of Jury Commission.

Opinion by Assistant Attorney General Haynes.

I have your letter of August 27, 1928, relative to the time to be consumed in the discharge of their duties and the pay of Jury Commission of your county.

It is my opinion that there is no limit as to the time in which your Jury Commission is required to do their work but I do find that they are limited in pay. This is provided in Section 8584 of the Code of Alabama, 1923, and is as follows:

"Compensation; How Paid.—Each commissioner shall be paid the sum of five dollars per day for the time actually engaged in the discharge of his duties as such commissioner, to be paid out of the county treasury upon the warrant of the Probate Judge of said county. Such warrants are to be issued by said Probate Judge upon evidence satisfactory to him that such service has been rendered; but the compensation of each commissioner shall not exceed for any year of his term the following amounts, viz.: in counties of twenty-five thousand population or less, $100.00; in counties exceeding twenty-five thousand and not exceeding fifty thou-

sand population, $200.00; in counties exceeding fifty thousand and not exceeding seventy-five thousand population $300.00. And in counties exceeding seventy-five thousand population six hundred dollars; the population of said respective counties to be determined by the Federal census."

It is clear from the above that the compensation of each member of the Jury Commission in the various counties of the State is fixed at $5.00 per day while actually engaged in the performance of their duties but the amount to be paid each member cannot exceed $100.00 for any year of that term in counties of 25,000 population or less, in counties exceeding 25,000 and not exceeding 50,000 population, $200.00; in counties exceeding 50,000 and not exceeding 75,000 population, $300.00; and in counties exceeding 75,000 population, $600.00. Not knowing just what the population of your county is as shown by the last Federal Census, I am not able to say just what the limit is on your county, but you can ascertain this by consulting the Federal Census.

See the case of:

Compton v. Marengo County Bank, 203 Ala. 129.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 13, 1928.

The State Highway Commission,
Capitol.
Gentlemen:

Highway Commission. No authority under Highway Code for Highway Commission to reimburse towns for constructing roads after work has been done by the town and where no advertisement or approval of project was made by the Highway Commission.

Opinion by Assistant Attorney General Smith.

I have your letter of September 10, 1928, in which you submit the following statement of facts:

"The State Highway Commission on the 22nd day of November awarded a contract to the Town of Atmore for paving in the town, on state highway, leading through the town. Previous to the award of this contract, the town had contracted and laid a stretch of paving on this State highway along this same street. The city officials of Atmore think that the State should pay for this paving paid for by the city previous to our contract, stating that it is a part of the State's trunk road system and they should be reimbursed the amount they have paid for same."

Upon this statement of facts you request the opinion of the Attorney General as follows:

"Under the circumstances set out in the statement of facts you desire to know whether or not the Highway Commission can reimburse a town

for paving paid for by them which is on one of the trunk roads and meets the specifications of the Highway Commission, but where no advertisement was had or the construction done under the supervision of the State Highway Commission."

In answer to your question I beg to state that under Section 25 of the Highway Code, 1927, the Highway Commission could not award the contract to build said highway without advertising for bids and the awarding of the contract to the City of Atmore for the construction of the highway. Then after awarding the contract under Section 30 of the Highway Code, 1927, the contract would have to be approved in the name of the State by the State Highway Commission and the highway director of the State Highway Commission and the Governor. Then bond would have been given as provided in Section 28 of the Highway Code to complete the transaction.

With these sections of the Highway Code above cited, I am of the opinion that the State Highway Commission could not reimburse the Town of Atmore for the paving of the streets which are a part of the trunk road without having complied with the above quoted Sections of the Highway Code of 1927.

Should the State Highway Commission pay for such a project as described in your letter it would be nothing more or less than the State Highway Commission buying a piece of road already constructed. To do this would be without legislative authority.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 13, 1928.

Hon. H. O. Garrett,
Clerk, Circuit Court,
Dadeville, Alabama.

Dear Sir:

Solicitor's fees.

Opinion by Assistant Attorney General Haynes.

I have your letter of August 27, 1928, in which you desire my opinion as to solicitor's fees in the following cases:

1st. Prosecutions instituted for the failure to take out chauffeur's license.

2nd. Failure to take out license to operate motor vehicles.

3rd. Failure to take out license for the sale of soft drinks and tobacco.

4th. Failure to take out license to operate saw mill.

All the above are prosecutions for violating the State Revenue Law and the solicitor's fee is governed by Section 3738 of the Code of Alabama, 1923, which is as follows:

"For each conviction of the violation of the Revenue Law, not otherwise provided for, $30.00."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 14, 1928.

Hon. V. H. Carmichael,
Chief Deputy Sheriff,
Jasper, Alabama.

Dear Sir:

Local Act of September 28, 1901, making allowance for sheriffs of Fayette and Walker Counties for summoning special jury repealed by adoption of Constitution of 1901.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of September 10, is acknowledged. You ask that we again consider the question of the validity of Local Act approved September 28, 1901, making allowance for sheriffs of Fayette and Walker Counties for summoning special jurors. The Act in question reads as follows:

"Section 1. Be it enacted by the General Assembly of Alabama. That for summoning the special jurors provided for in Section 5004 of the Code of Alabama, the Sheriffs of Fayette and Walker Counties shall receive not less than twenty-five dollars and not more than fifty dollars in each case, which sum shall be allowed by the commissioner's court and paid by the County Treasurer of Fayette and Walker Counties, as special exofficio fees.

"Section 2. Be it further enacted, That whenever the sheriffs of Fayette and Walker Counties shall have performed said service, they shall present their accounts to the commissioners courts of said counties with proof of same. The sheriff's return in the venire shall be prima facie proof of same.

"Section 3. Be it further enacted, That all laws and parts of laws in conflict with this Act be and the same are hereby repealed.

"APPROVED February 28, 1901."

It is my opinion that this Act when passed was constitutional and valid. It was approved when the Constitution of 1875 was the Constitution of the State. There was no provision in said Constitution inconsistent with the Act. It was apparently passed and approved as then permitted by the Constitution.

Subsequent to the approval of this Act the Constitution of 1901 was adopted. This was done within the same calendar year. By Section 1 of Schedule, at the end of the Constitution, it is provided:

"1. That all laws in force at the ratification of this Constitution and not inconsistent therewith, shall remain in full force until altered or re-

pealed by the Legislature; and all rights, actions, claims and contracts of the State, counties and municipal corporations, individuals or bodies corporate, not inconsistent with this Constitution, shall continue to be valid as if this Constitution had not been ratified."

The clear implication, and indeed the necessary effect, of adopting the Constitution of 1901, was to repeal all laws which, in substance, were inconsistent therewith, unless specially preserved by the Constitution itself. In other words a law which could not be passed after the adoption of the Constitution of 1901, because inconsistent with said Constitution, was repealed by the adoption of said Constitution, although perfectly valid when approved. Section 96 of the Constitution 1901, of the State of Alabama provides:

"The Legislature shall not enact any law not applicable to all the counties in the State, regulating costs and charges of courts, or fees, commissions or allowances of public officers."

The said local Act provides an allowance to sheriffs of Walker and Fayette Counties which was not, and is not, applicable to all the counties in the State. It is, therefore, inconsistent with the provisions of Section 96 of the Constitution of 1901, and was necessarily repealed by the adoption of said Constitution.

We are, therefore, of the opinion that the allowance made for sheriffs "for summoning special jury in capital case, or at any special term for the trial of criminal" is as provided by Section 3741, Code of Alabama, 1923.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 14, 1928.

Mr. Arthur Wellborn, President,
Calhoun County Board of Education,
Anniston, Calhoun County, Alabama.

Dear Sir:

Neither County or County School Board of Education can be sued in tort for negligence of driver of bus in transporting children to school under authority given by Section 100 of School Code, 1927.

Opinion by Assistant Attorney General Evans.

Receipt of your letters of July 30th and of September 13th is acknowledged. You state that the Calhoun County Board of Education operates and is owner of about twenty busses for the free transportation of school children to the various high schools of your county. You ask my opinion if, in case of an accident to said busses or negligence on the part of the drivers of said busses, would the County Board of Education or the county be liable for damages for death or injury occasioned by such accident or negligence?

In reply will say that the whole common school education system of the State is a State instrumentality, made in accordance with and upon the

mandate of Article XIV of the Constitution of the State of Alabama. County Boards of Education are simply parts of this system. Upon authority of the cases of White v. Alabama Insane Hospital, 138 Ala. 479, and of Cox v. Board of Trustees of the University of Alabama, I give it as my opinion that neither the County School Board of Education nor the county could be held liable for damages caused by the negligence of the drivers of said busses. The county, as a governmental agency of the State, has nothing to do with such matters. It has no authority in the premises. The authority for such transportation is given by Section 100 of the School Code, 1927, to the County Board of Education. A suit against the County Board of Education is, in effect, a suit against the State and cannot be maintained.

Constitution of Alabama, 1901.

Even where authority to sue a governmental agency of the State is given by statute, such authority does not extend to suit upon a tort for damages.

White v. Insane Hospital, 138 Ala. 479.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 17, 1928.

County Board of Revenue,
Calhoun County,
Piedmont, Alabama.
Attention: Mr. S. D. Savage.

Gentlemen:

Authority to condemn land incident to maintenance of State highway already constructed. Authority of the county to expend money on land required for necessary drainage for highway.

Opinion by Assistant Attorney General Knight.

I have your letter of July 25, 1928, in which you inquire what may be done in the event a certain State highway is being damaged by water on account of inadequacy of drainage. You state that it is necessary to construct a large drain through the property of an abutting owner.

I am of the opinion that the State of Alabama, after it has obtained a right of way through the property of a person, may condemn additional land as may be necessary to insure the proper drainage of the highway thereby effecting its maintenance.

I am also of the opinion that this additional ground necessary to be condemned, can be condemned at the expense of your county.

The fact that the State has already condemned land, or acquired the title thereto does not preclude it from condemning land necessary to maintain the property.

Cooper v. Anniston & Atlantic Railroad Co., 85 Ala. 106.

The State may acquire the necessary abutting property to protect the maintenance of this road at the expense of the county.

Section 31 and 32, Highway Code of 1927, pp. 11 and 12.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 17, 1928.

The State Tax Commission,
Capitol.
Gentlemen:

Construction of Statute: License required by physicians and attorneys, residents of bordering states, residing near the State line who practice habitually their profession in this State.

Opinion by Assistant Attorney General Knight.

I have your letter of July 21, 1928, in which you inquire whether or not certain professional men, viz.: doctors and lawyers, who reside in other states near the border but practice regularly in the State of Alabama, are required to procure a license to practice in this State. You state that there are instances of lawyers and doctors, who reside in such bordering towns as West Point, Georgia, in many instances have a larger practice in this State than they do in Georgia.

I am of the opinion, that lawyers residing in another State but who practice habitually in the courts of this State, and physicians who habitually practice their profession in this State, are required to procure a license as provided by statute in such cases.

I have not overlooked the principles of courtesy and comity which by usage and custom are extended to lawyers and physicians.

State v. Stepney, 58 Ala. 365.

The Acts of 1927, at page 669, clearly define who may practice law in this State. This Act also defines the practice of law.

Like definitions are to be found in the Code of 1923, applicable to physicians or doctors.

General Acts of 1927, pages 153 and 155 provide the license to be paid by attorneys and doctors, respectively.

Comity may be, by the courtesy of the court, extended to an attorney who occasionally practices in the courts of this State, particularly in representing clients of his own State. In such instances the attorney is not a competitor of attorneys of this State who are required to procure license. The same reasoning is applicable to doctors who occasionally are called into consultation, or attend a case in this State.

However, when doctors or lawyers become habitual practitioners of their respective professions in Alabama they are competitors of the physicians and lawyers of Alabama, who are required to procure a license.

Principles of comity do not relieve a habitual practitioner of a profession, a resident of another State, in a State other than his own, of the necessity of procuring a license to practice in the State of which he is a non-resident.

Manning v. Roanoke R. R. Co., 28 S. E. 963.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 17, 1928.

The Commissioner of Game and Fisheries,
Capitol.

Dear Sir:

Circuit clerk fees for remitting fines belonging to the game and fish protection fund to the Department of Game and Fisheries.

Opinion by Assistant Attorney General Rayburn.

I have your letter of July 24, 1928.

You request my opinion:

"Is the circuit clerk legally entitled to retain a commission of five per cent on collections coming into his hands on account of violations of the game and fish law?"

It is a well established principle of law that one claiming fees or costs must point to the definite law authorizing the same. The law of costs and fees must be strictly construed, and no fee or commission can be legally collected in the absence of a provision therefor.

Pollard v. Brewer, 59 Ala. 130.
Mobile County v. Williams, 180 Ala. 639.

I find no provision of law which authorizes the retention of a commission by the clerk of the circuit court for remitting the fines here considered to the State.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 17, 1928.

Hon. R. H. Williams,
Judge of Probate,
Guntersville, Alabama.
Dear Sir:

Conviction for living in adultery takes away citizenship.

Opinion by Assistant Attorney General Haynes.

I am in receipt of your letter of April 21st, in which you make request for an opinion on the following matter:

"Mr. 'A' of Marshall County, was convicted in 1904 of adultery and sentenced to hard labor for the county. Did this conviction at that time take away his citizenship and deprive him of the right to vote?"

I am of the opinion that where one was convicted in 1904 of living in adultery, that person is disqualified from registering and voting until citizenship with right to vote has been restored as provided in Section 365 of the Code of Alabama, 1923.

Living in adultery is included in Section 364 of the Code of Alabama 1923, as one of the crimes, a conviction of which produces the disqualification. This was the law in 1904. The Code of 1923, Section 364 has not been amended. The Constitution, Section 182, contains the same provision.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 17, 1928.

Hon. C. R. Myrick,
Justice of the Peace,
Coffeeville, Clarke County, Alabama.
Dear Sir:

Who may vote in stock law elections.

Opinion by Assistant Attorney General Haynes.

I am in receipt of your letter of September 12th, 1928, in which you request my opinion as to who are qualified to vote in stock law elections.

Section 10211, Code of Alabama, 1923, fixes this and is as follows:

"Who Qualified to Vote.—All qualified electors who are bona fide residents in the precinct or precincts where the election is held shall be entitled to vote, and none others."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 18, 1928.

The Superintendent,
Bureau of Insurance,
Capitol.

Dear Sir:

Industrial corporations exempt from provisions of Section 1 of H. B. 405, approved September 9, 1927.

Opinion by Assistant Attorney General Koonce.

I have your letter of November 16, 1927. In some manner the matter which you refer to in your letter has been overlooked, but I understand that you still desire an opinion on it. You enclose a copy of H. B. 405, approved September 9th, 1927. Said House Bill pertains to mutual aid, benefit and industrial insurance companies and associations.

You request my opinion:

"Does the last paragraph of Section 1 of H. B. 405 authorize industrial corporations and hospitals to charge an employee a fee for the service rendered to him and his dependents, or should the service be rendered to the employees free of charge in order to secure the exemption referred to in the last paragraph of Section 1 of H. B. 405?

In my opinion industrial corporations may make agreements with hospitals or may maintain hospitals of their own for the purpose of providing dental, medical and surgical attention for the employees of such corporation, and such industrial corporations are exempt from the provisions of Section 1 of H. B. 405, whether or not a charge be made for such service or it be rendered to the employees free of charge.

The last paragraph of Section 1 of H. B. 405, is as follows:

"* * * Provided, however, that nothing herein contained shall prevent agreements by and between industrial corporations and hospitals to provide for dental, medical and surgical attention for the employees of such industrial corporations; and provided further that nothing herein contained shall prevent the employment of medical doctors and surgeons for the purpose of giving medical and surgical attention to the employees of such corporation."

You will observe from the above provision of Section 1 that industrial corporations can either make agreements with independent hospitals or that such industrial corporations may maintain hospitals of their own for the purpose of providing dental, medical and surgical attention for their employees, and that although such industrial corporations make agreements with independent hospitals or maintain hospitals of their own, they are exempt from the provisions of Section 1, supra. The principle that laws granting exemptions must be strictly construed is so well recognized that it needs no citation of authority. Applying this principle to Section 1 of H. B. 405, we must nevertheless decide that industrial corporations rendering dental,

medical and surgical attention to their employees are exempt from the provisions of Section 1, whether or not a charge be made for such service.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 18, 1928.

The State Tax Commission,
Capitol.

Dear Sirs:

Section 55 of Revenue Act 1927, Acts 1927, page 177, invalid.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of former date is acknowledged. You wish my opinion as to the constitutionality of Section 55 of Revenue Act 1927, Acts 1927, p. 177. This section reads as follows:

> "That funds or capital employed in mutual building and loan associations incorporated under the laws of the State of Alabama, which funds are withdrawable by the members on certificate or stockholders shall not be deemed capital employed or taxable under the terms of the two preceding sections."

In my opinion, said Section 55 is invalid and, therefore, not to be considered by you in administering the franchise tax law.

On a careful reading of said Section 55 and the two preceding Sections, which are 54 and 54½, it will be observed that Section 55 treats of funds or capital employed in mutual building and loan associations **incorporated under** the **laws** of the **State** of **Alabama**; that is, to domestic corporations; while the two preceding sections deal with the question of foreign corporations. However, it was evidently originally written to apply to Sections 53 and 54. But, even eliminating Section 54½ from consideration, by the very language of Section 55 it could not apply to Section 54, that is, to foreign corporation. It can apply only to mutual building and loan associations, organized under the laws of the State of Alabama.

If said Section 55 was intended to apply to Section 53, then, in my opinion Section 55 is unconstitutional. Section 53 is a tax levied upon the franchise of domestic corporations in accordance with the constitutional mandate of Section 229 of the Constitution. This section of the Constitution provides:

> "The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by corporations organized under the laws of this State, which shall be in proportion to the capital stock," etc.

This provision of the Constitution is mandatory upon the Legislature. "and the mandate applies to all domestic corporations save only the classes of corporations expressly excepted from the tax, viz.: those which are strictly benevolent, educational or religious."

State v. Elba Bank & Trust Co., 91 So. 919.

Said Section 53 complies with the mandate of said Section 229 of the Constitution of the State of Alabama. The attempt in said Section 55 to exempt part of the capital stock of incorporated Building and Loan Association from the operation of the law as provided in said Section 53, is in violation of the mandate of said Section 229 of the Constitution. It, therefore, follows that, if said Section 55 was intended to apply to said Section 53, it is unconstitutional and void.

State v. Elba Bank & Trust Company, 91 So. p. 919.

To summarize: 1st. Section 55 by its own words can apply to domestic corporation only. 2nd. As applied to domestic corporations, it violates the mandate of Section 229 of the Constitution of Alabama in that it attempts to exempt from franchise tax part of the capital stock of Building and Loan Associations.

What constitutes capital stock within the meaning of Section 229 of the Constitution is a question for the courts and not for the Legislature.

Lindsay v. U. S. Co., 120 Ala. 166.
Carlton v. Goodwin, 41 Ala. 153.
Ins. Co. v. Boykin, 38 Ala. 110.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 18, 1928.

The Board of Registrars,
Pike County,
Troy, Alabama.

Gentlemen:

Extra Session of the Board of Registrars.

Opinion by Assistant Attorney General Rayburn.

I have your letter of September 10, 1928, in which you request my opinion:

> "May the Commissioners Court or Board of Revenue of Pike County legally call the registrars into extra session at this time or may they legally call the Board of Registrars in a ten days extra session at this time?"

It is my opinion that such action would be illegal.

The law permits the sitting in extra session of the Board of Registrars during the month of January only, providing that the registration books may be opened for a period of ten days during said month. No provision of law is made for the opening of books at any other time, other than the regular time, for the period of ten days additional registration.

Section 375, Code of Alabama, 1923, as amended by an Act approved August 20, 1927 (General Acts 1927, p. 274) provides for the regular session of the Board of Registrars for the various counties of the State. Said section fixes the time for the general registration between October 1st and December 31st, 1927, and every two years thereafter.

Section 376, Code of Alabama, 1923, as amended by an Act approved August 20, 1927, provides that:

> "In addition to the regular registration provided in this article, the courts of county commissioners, board of revenue, or other courts of like jurisdiction of the several counties may make an order requiring the books of registration to be opened for ten working days during the month of January, 1921, and each two years thereafter, for the purpose of registering voters, except in counties having more than one hundred and fifty thousand population, as shown by the last Federal Census or any succeeding Federal Census in which counties the Board of Registration shall be opened on the second Monday in December, 1928, second Monday in February, 1929, second Monday in April, 1929, second Monday in June, 1929, second Monday in August, 1929, and every two years thereafter, and remain in session six days at each of such sessions for the purpose of registering voters."

This is the only provision of law for a special registration in addition to the regular session provided for in Section 375 as amended, which is referred to supra. Inasmuch as Pike County has a population of less than one hundred and fifty thousand according to the last Federal Census, the only time during which the books of registration may be legally opened is for ten working days during the month of January, 1921, and each two years thereafter for the purpose of registering voters.

See Opinion of Attorney General, March 7, 1927.
Also Opinion of Attorney General, July 14, 1928, Vol. 6, p. 269 (Office Edition).

Your attention is called to the change in the time for the special registration from that named in Section 376, Code of Alabama, 1923. Said section as amended changes the time of meeting from the month of July to the month of January.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 19, 1928.

The Sheriff,
Franklin County,
Russellville, Alabama.
Dear Sir:

"A person neither summoned as a witness for the State in a criminal case nor examined as a witness is not entitled to pay as a witness for attending court.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of July 12th is acknowledged. You ask:

"When my deputies make a case in court and the defendants enter a plea of guilty, should they not be paid for court attendance?"

I presume you mean for attendance as witnesses. In reply will say that Section 3768 of the Code provides:

"In taxing the cost, against either the defendant or prosecutor, not more than two witnesses who were summoned or examined to prove the same fact shall be allowed, etc."

You will see from the foregoing that to entitle a person to pay as a witness he must either have been duly summoned as a witness by the State, or must have been examined as a witness by the State. Where a person, though present at court, was not summoned as a witness and was not called upon to testify, he cannot be paid for his attendance.

Being present in court, of one's own volition, to testify if needed, does not entitle one to pay as a witness, where the defendant pleads guilty and such witness is not examined.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 19, 1928.

Hon. J. H. Webb,
County Attorney, Mobile County.
Mobile, Alabama.
Dear Sir:

County can bring condemnation proceedings in its name for highway purposes. Several distinct tracts owned by different persons may be included in one petition.

Opinion by Assistant Attorney General Smith.

I have your letter of September 10, 1928, in which you request my opinion on the following questions of law:

1. Under Section 31 of the State Highway Code of Alabama of 1927, can the county bring condemnation proceedings in its name for needed

rights of ways to which the County of Mobile has been unable to procure deeds, for the construction of highways in Mobile County.

2. Would separate condemnation proceedings have to be instituted against the different owners, or could all be brought in one proceeding for condemnation of different tracts of land?

In answer to your first question I am of the opinion that where the Highway Department has taken over the work of building certain roads in Mobile County as provided for in Section 8 of Local Acts of the Legislature, 1927, p. 153, the county has authority under Section 31 of the Highway Code of Alabama, 1927, to bring condemnation proceedings to obtain proper rights of ways for the construction of highways, and aside from this provision of the Highway Code, there is ample authority contained in Section 7476 of the Code of Alabama, 1923, which is as follows:

"The University of Alabama, the Alabama Polytechnic Institute, the Alabama College, or corporation organized under the laws of this State, or any person, or association of persons, proposing to take lands, or to acquire an interest or easement therein, for any uses for which private property may be taken, may, if there be no other mode of proceeding prescribed by law, apply to the court of probate of the county in which such lands, or a material portion thereof, may be situate, for an order of condemnation thereof to such uses. The State may institute and maintain the proceedings herein authorized in its own name, without giving bond or security or causing affidavit to be made, though the same may be required if the action were between private citizens. The written direction of the governor to the attorney of record is a sufficient authority for bringing this suit."

In answer to your second question I am of the opinion that where there are several parcels of lands owned by different persons that the county cannot obtain deeds to, and that the county considers as needed for the construction of highways, the county could bring one proceeding as provided in Section 7483 of the Code of Alabama, 1923, which is as follows:

"SEVERAL DISTRICT TRACTS IN ONE APPLICATION.—If there are several district tracts of land owned, claimed or held by different persons embraced in the application, the owners of each tract, or other party interested therein may have a separate hearing as to the right to condemn their lands, and the court may, if it finds that the application should be granted as to some and not as to other of the owners or other parties, make and enter its decree accordingly. The court is not required to treat the proceedings as a joint action, but may hear and determine the application separately, as to the parties and lands named and described in one or more of the paragraphs therein, and may continue the hearing thereof as to the parties and lands named and described in other paragraphs therein, so as to promote justice and the dispatch of business."

Should different parcels of land be set out in one petition the court would ascertain the value of each parcel ,and the county could pay for the same out of funds allocated to different projects as the case may be.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 19, 1928.

The Tax Collector,
Ashland, Clay County, Alabama.

Dear Sir:

Construction of Section 239, Revenue Act, 1919, Acts 1919, p. 352.

Opinion by Assistant Attorney General Evans.

Receipt of your letter of July 9th is acknowledged. You wish to know:

1. Can a municipal corporation in this State compel a tax collector of the county in which such municipal corporation is situated, to collect the taxes due said municipal corporation?

2. Should a tax collector refuse or fail to collect such taxes would he and his bond be liable for such failure?

The answer to the foregoing questions involves a construction of Section 239, Revenue Act, 1919.

This Section reads as follows:

"Section 239. Any municipal corporation in this State, may, by ordinance duly adopted, provide for the assessment, equalization and collection of taxes due such municipality by the officers and boards provided in this Act, and all the machinery herein provided for the assessment, equalization and collection of state and county taxes, the enforcement of such collection, the sale of property for the collection of taxes and the redemption from such sales shall be applicable to the assessment and collection of such municipal taxes, the sale of property for the collection of such municipal taxes, and the redemption from such sales, provided that the assessor and collector shall receive such compensation as may be fixed by the governing body of such municipality, not to exceed one-half of one per cent for assessing and one half of one per cent for collecting."

It is perfectly clear from the provisions of the foregoing section that any municipality may by the method provided in said section provide for assessment and collection of taxes by the same officers who assess and collect taxes for the county and State. The number of inhabitants of the corporation is immaterial. When the proper ordinances are passed by a municipal corporation as provided in said Section 239, the duty of the tax assessor to assess, and of the tax collector to collect the municipal taxes is just as binding as is the duty to assess county and State taxes.

A person accepting public office requiring the rendition of services takes the office **cum onere** and must render their services gratuitously, unless by express statutory provision, compensation is fixed and an express liability for payment imposed.

Mobile County v. Williams, 180 Ala. 639.
Torbert v. Hale Co., 131 Ala. 143.
Troup v. Morgan Co., 109 Ala. 162.

In the case under consideration, the municipality is permitted to provide by ordinance for compensation not to exceed one-half of one per cent for collecting the taxes. When proper ordinances are passed making it your duty to collect such taxes, you and your bond would be liable just as for failure to collect state and county taxes. Counties and cities are political subdivisions of the State. The Legislature has full authority to legislate with reference to them except as limited by the Constitution of the State. There is nothing in the Constitution which would or could take from the Legislature the power to enact the provision of said Section 239 of the Revenue Act, 1919.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 24, 1928.

Mrs. A. M. Tunstall, Director,
Child Welfare Department,
Capitol.

Dear Madam:

Divorce proceeding—effect of on suit for non-support in Juvenile Court.

Opinion by Assistant Attorney General Rayburn.

I have your letter of September 19, 1928. You request my opinion:

Where a wife secures a divorce and alimony and the husband fails to carry out the decree of the court of equity, may the wife sue her husband in the Juvenile Court for non-support?

It is my opinion that a suit for non-support would not lie in the Juvenile Court under the facts and circumstances related by you.

The remedy in such a case as you inquire of is that of a contempt proceeding in the Chancery Court which would seek to have the respondent comply with the decree of the court. The Juvenile Court would have no jurisdiction when a matter is pending in the Chancery Court.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 25, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Capitol.
Dear Sir:

Charter fees on domestic corporations should be collected on amount of proposed capital stock.

Opinion by Assistant Attorney General Smith.

I have your letter of June 14th, 1928, in which you request an opinion of the Attorney General as to the interpretation of Section 6969 of the Code of Alabama, 1923, as follows:

Whether or not the charter fees for domestic corporations' are one dollar per thousand on the paid-up capital stock, or one dollar per thousand on the authorized or proposed capital stock.

I am of the opinion that the charter fees on domestic corporations, as provided for in Section 6969 of the Code of 1923, means that one dollar for every one thousand dollars of its total capital stock should be collected, and that said statute does not say or contemplate that one dollar for every thousand dollars of its paid-up capital stock should be the basis for the collection of said fee. The Probate Judge should, therefore, in all instances collect one dollar on each one thousand dollars of the proposed total capital stock regardless of the amount of the capital stock actually paid up, and in no instance less than $5.00.

In answer to your second inquiry, I am enclosing you an opinion rendered by this office to J. F. Posey, Judge of Probate of Autauga County on February 2, 1928, which will answer your question.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

Encl.

September 25, 1928.

Deputy Solicitor,
Wilcox County,
Camden, Alabama.
Dear Sir:

Taxi Hire.

Opinion by Assistant Attorney General Haynes.

I have your letter of July 4, 1928, in which you state a party at Pineapple, Alabama, engaged a taxicab to carry her from Pineapple to Luverne. On arrival she refused to pay the amount charged for this service. You request my opinion:

"Is this false pretense? If not, is there a criminal statute covering this statement of facts?"

Certainly under the statement of facts contained in your letter this is not a violation of law. It is just simply a debt arising under contract. It does not carry the elements of false pretense and if there were a statute covering the same it would be unconstitutional.

To arrest a person under the statement of facts you present would be directly in the teeth of both State and Federal Constitution. Section 20, Constitution of Alabama, 1901, is as follows:

"That no person shall be imprisoned for debt."

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 25, 1928.

The Chief Examiner,
Department of Examiners of Accounts,
Capitol.

Dear Sir:

Probate Judges entitled to fee of fifteen cents per hundred words for recording minutes and proceedings of the County Court of Commissioners.

Opinion by Assistant Attorney General Smith:

I acknowledge receipt of your letter of June 15th, 1928, in which you state that the Judge of Probate of Greene County, charges Greene County for making three copies of the semi-annual report of the receipts and disbursements of all county funds and the financial condition of the county; one for publication in the newspaper, one to be posted in his office and one the record entry in the minutes of the Commissioners Court. Upon this statement of facts you request the opinion of the Attorney General on the following question of law:

Whether or not there is any law authorizing the Probate Judge to make such charges against the county and collect the same from the County Treasury.

The publication referred to is provided for in Section 6766 of the Code of Alabama, 1923, which is as follows:

"6766. Publication of receipts and disbursements.—The courts of county commissioners, board of revenue or like governing bodies shall make a semi-annual publication on the first days of January and July of each year, in a newspaper published in the county, of an itemized report, showing the receipts and expenditures of money for the county, specifying particularly the sources from which received, and the purposes for which expended. Said publication must also show the entire indebtedness of the county, of whatever kind and character, specifying particularly the amount of bonds outstanding, their character and when

due; the amount of the outstanding warrants, whether interest-bearing or not, and if interest-bearing, the rate of interest, for what said warrants were issued and when due and payable."

Section 6763 of the Code of 1923, provides that the Probate Judge must record the proceedings of the Court of County Commissioners, and make all necessary orders, this of course, means that the Probate Judge shall keep the minutes of the Commissioners Court and record same, and for this service he is allowed fifteen cents, for each one hundred words for recording the minutes and proceedings of the Commissioners' Court as provided in Section 7285 of the Code of 1923.

I am unable to find any provision of law authorizing or requiring a Judge of Probate to make three copies of the semi-annual report of the receipts and disbursements of county funds, likewise I find no provision of law for posting a copy in his office.

I am of the opinion, that the Probate Judge as a member of the Court of County Commissioners has imposed on him the duty of keeping the minutes of said Court, and as a member of said Court to make a semi-annual publication on the first days of January and July each year, in a newspaper published in said county, and for keeping the minutes and proceedings of said Court, he is paid a salary as other commissioners, but in the capacity of Probate Judge he is entitled to fifteen cents per hundred words for recording in the Probate Judge's office the minutes and proceedings of said Commissioners' Court, and is entitled to no other fees in this connection.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 26, 1928.

Dr. E. W. Patton, Secretary-Treasurer,
Board of Dental Examiners,
725-26 First National Bank Bldg.,
Birmingham, Alabama.

Dear Sir:

Fee for dental examination.
Penalty where license certificate defaulted.

Opinion by Assistant Attorney General Rayburn.

I have your letter of September 10th.
You request my opinion:

1. Can the Board of Dental Examiners legally accept from one applicant the total expense of holding an examination; that is, the per diem and necessary expenses of the several members of the Board of Examiners, or, in other words, can the Board of Examiners give an examination to one or more applicants, and legally collect a fee in excess of $20.00?

2. Can the Board of Dental Examiners legally collect more than one

penalty in a case where a license certificate has been in default for more than one year?

In answer to your first question I advise you that Section 348, Code of Alabama, 1923, as amended, September 6, 1927 (General Acts, 1927, p. 750), provides as follows:

"The said Board of Dental Examiners of Alabama shall charge each person applying to it for a certificate to practice dentistry or dental surgery in this State, a fee for examination of $20.00."

Any amount collected from an applicant for a certificate in excess of said $20.00 would be an illegal charge.

In answer to your second question, I advise you that Section 349, Code of Alabama, 1923, as amended September 6, 1927 (General Acts 1927, p. 751), provides that when a dental "certificate is in default for more than one payment period, the payment of the fee of $2.00 with the additional sum of $10.00 for each payment period in default shall be necessary to restore said license certificate." Prior to the amendment of said Act, it was only necessary for one in default to pay but one penalty before such a person would be legally entitled to have his license certificate restored.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 27, 1928.

Hon. B. G. Jennings,
Clerk of the Circuit Court,
Seale, Alabama.
Dear Sir:

Jury Duty—Persons exempt therefrom.

Opinion by Assistant Attorney General Rayburn.

I have your letter of September 17th, 1928.
You request my opinion:

"Are county road foremen, night watchmen, jail guards, or any other employees of the county drawing regular monthly salaries subject to jury duty, and, if so, are such persons entitled to draw a per diem for jury service?"

I advise you that none of the employees named by you in your inquiry are exempt from jury duty, and that such persons, for performing jury duty, are entitled to draw their per diem for such service.

Section 8605, Code of Alabama, 1923, as amended February 21st, 1927 (General Acts, 1927, p. 76) enumerates persons who are exempt from jury duty in the State of Alabama, if such persons desire to avail themselves of said exemption; that is, judges of the several courts, practicing attorneys at law, officers of the United States, officers of the executive departments of

the State Government, sheriffs and their deputies, clerks of the courts and county commissioners, legally licensed and practicing physicians, dentists or pharmacists, teachers of public or private schools while actively engaged in their profession, officers and legally licensed engineers of any boat plying the waters of this State, train dispatchers, railroad station agents, telegraph operators actively engaged in the discharge of their duties, legally licensed embalmers while actively engaged in their profession, and rural and city or town mail carriers while engaged in their work. All other male citizens of the State, twenty-one years of age up to sixty-five years of age, are subject to jury duty.

If the jail guards you have in mind are deputy sheriffs, of course, they would be exempt from jury duty under the authority contained in the above cited section.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 27, 1928.

The Tax Assessor,
Wedowee, Randolph County, Ala.
Dear Sir:

Cotton—Tax thereon.

Opinion by Assistant Attorney General Rayburn.

I have your letter of March 20, 1928.
You request my opinion:

"How long may a person legally hold cotton which he has purchased without paying a tax on the same?"

I am of the opinion that cotton remaining in the hands of the purchaser thereof, or his landlord, or in the hands of the purchaser, purchasing same for prompt shipment, can legally remain in the hands of such parties for a period of two years without being subject to a tax thereon.

Schedule (g) contained in Section 2 of an Act approved September 15, 1919 (General Acts, 1919, p. 283), and Schedule (g) of an Act approved August 22, 1923 (General Acts, 1923, p. 153), read as follows:

"The following property and persons shall be exempt from ad valorem taxation * * * : (g) All cotton or other agricultural products which are raised or grown during the current or preceding calendar year, and which shall remain in the hands of the purchaser thereof, or his landlord, or in the hands of the purchaser purchasing the same for prompt shipment, etc."

The word "current" is defined as follows: "Now passing, as time; as the current month."

See Webster's International Dictionary.
The word "calendar" is defined as follows:

"An orderly arrangement of the divisions of time, adapted to the purpose of civil life, as year, month, week and day, also a register of the year with its divisions."

Said schedule above quoted must be strictly construed, and, for a person to receive the benefits of the exemptions therein expressed, such a tax payer must place himself strictly within the terms of said schedule: That is to say, if a person purchases cotton for the purpose of consumption, he is not a purchaser of the same for prompt shipment as defined in said Schedule. Therefore, the cotton so purchased would not be exempt from taxation. In my opinion, the manufacturer of cotton is not entitled to the exemption named in said Schedule (g) of Section 2 of said Act above quoted.

Opinions of Attorney General, 1920-22, p. 291.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 27, 1928.

The Superintendent of Education,
Opelika, Lee County, Alabama.
Dear Sir:

County Board of Education—Cannot convey school property to Town of Auburn.

Opinion by Assistant Attorney General Koonce.

I have your letter of June 22, 1928. In it you state that on June 12, 1928, a district tax election was held in the Town of Auburn and the school district adjacent to the Town of Auburn for the purpose of ascertaining whether or not a special school tax of three mills shall be levied and collected for school purposes for a period of ten years. You also state that the tax was voted for general school purposes, but that the object of the tax was not stated in the notice. You further state that the tax was voted for the following:

1. To repair the present school building in the town of Auburn, which is now under the control of the County Board of Education, provided the three mill tax does not bring in a sufficient amount of revenue to construct a new building.

2. In the event it is found that the present levy will not produce enough revenue to erect a new building that said funds will be used for the purpose of purchasing a lot and erecting a modern grammar school building.

You request my opinion:

"Can the district tax fund be used for the purpose of purchasing a lot, to be deeded to the town of Auburn, and the erection of a school building on said lot?"

In my opinion the district tax fund can be used for the purpose of purchasing a lot and the erection of a school building on said lot, **but in my opinion said lot cannot be deeded to the town of Auburn.**

Section 95, Alabama School Code, 1927, is as follows:

"All the property, estate, effects, money, funds, claims, and donations now or hereafter vested by law in the public school authorities of any county for the benefit of the public schools of any county, hereby transferred and vested in the County Board of Education, and their successors in office. Real and personal estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, **shall be held in trust by the County Board of Education for the benefit of any such county school district or school.**"

You will observe that all real estate granted, conveyed, devised or bequeathed for the use of any particular county, school district, or public school, shall be held in trust by the County Board of Education. If the County Board of Education should deed school property to the town of Auburn, thereby losing control of said property, it would violate the provisions of the above section.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 28, 1928.

The Chief Examiner of Accounts,
Department of Examiners of Accounts,
Capitol.

Dear Sir:

Costs.

1st. Where the defendant works at hard labor for a sufficient number of days to pay the costs, and the Convict Department pays only that part of the costs provided by statute, there is no provision for the payment of costs unpaid out of any fund of the county.

2nd. Where the defendant was sentenced to the penitentiary, and there remains a difference between the amount paid the officers by the Convict Department as costs, and the amount of costs accrued to officers, and the defendant has not worked out any sentence for costs, execution may be issued for the costs, and where return is made "no property found" the same may be a charge against the fine and forfeiture fund of the county.

3rd. Where there is no judgment for costs no execution may be issued. Where execution may not be issued in case of a conviction the fees of the sheriff and clerk are not a legal charge against the fine and forfeiture fund of the county.

4th. Cases transferred from Circuit or County Court to Juvenile Court, the fees of the sheriff and clerk in the Circuit Court are a charge against the fine and forfeiture fund.

Opinion by Assistant Attorney General Knight.

This is to acknowledge receipt of your letter of September 13th, 1928, in which you inquire:

1st. As to the provision of law for the charge of the balance due the sheriff against the fine and forfeiture fund of the county where the convict has worked a sufficient number of days at the prescribed rate to pay the same.

2nd. In which you inquire whether or not execution may be issued, and where return is made "no property found," are the fees of the clerk and sheriff charges against the fine and forfeiture fund of the county where there remains a balance after costs provided by statute in penitentiary cases have been paid to the officers.

3rd. Where there is no judgment for costs, and execution is issued, and return made thereon "no property found," are the fees of the sheriff and clerk a legal charge against the fine and forfeiture fund?

4th. Whether or not fees of the sheriff and clerk are a legal charge against the fine and forfeiture fund where a case is transferred from the Circuit or County Court to the Juvenile Court?

In answer to your first inquiry I am of the opinion that where the defendant, at the prescribed rate, works out the costs, and the Convict Department has not paid to the officers the full amount of the costs accrued to them, no execution may be issued against the convict, and since execution may not be issued, this balance due the officers may not be charged against the fine and forfeiture fund of the county, or any other fund of the county.

Mims Co., Treasurer, v. the State, 180 Ala. 511.
Hendon v. Delvinis, 137 Ala. 594.
State v. Brewer, 59 Ala. 130.

The county is liable for costs only in the manner and to the extent provided by law.

Greene County v. Hale, 61 Ala. 72.

In answer to your second question where a defendant is sentenced to the penitentiary, there being no sentence for costs, executions may be issued against the convict for the costs in the case which are a civil debt, and where all the costs have not been received, if execution for the balance is issued, and return made thereon "no property found," this balance of fees due the officers is a charge against the fine and forfeiture fund of the county. Authorities supra.

Third, where a defendant is convicted and sentenced to jail, and there is no judgment for the costs in the case, execution may not issue, and the fees of the sheriff and the clerk are not a legal charge against the fine and forfeiture fund of the county. A judgment for costs is a necessary prerequisite to the issuance of an execution.

Fourth, where the case is transferred from the Circuit Court or County Court to the Juvenile Court, it has been held by this office that such a transfer is in effect a nolle prosequi. Furthermore, it is a case where the defendant was not convicted, therefore, the costs and fee accrued in the county court

and in the circuit court are a proper charge against the fine and forfeiture fund of the county.

Biennial Report of the Attorney General, 1924-26, p. 74.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 28, 1928.

Dr. Douglas L. Cannon,
Acting State Health Officer,
State Capitol,
Montgomery, Alabama.

Dear Sir:

State Health Officer—Term of office of.
Board of Censors' electing state health officer secretary of the board.

Opinion by Assistant Attorney General Rayburn.

I have your letter of September 13th. You state that in 1927, the late State Health Officer, Dr. S. W. Welch, was elected for a term of five years. You request my opinion:

1. Will the successor to Dr. Welch be chosen to fill the unexpired term or will he be elected for a full term?

2. Can Dr. Welch's successor legally be elected for a shorter term than five years?

3. Should the State Health Officer not be a member of the State Board of Censors, has the Board of Censors the right to elect the state health officer secretary of said board?

In answer to your first question, it is my opinion that the successor to Dr. Welch should be elected for a full term of five years. Section 1053, Code of Alabama, 1923, as amended February 10, 1927 (General Acts, 1927, pages 39 and 40), provides that the State Board of Health shall elect an executive officer to be known as the State Health Officer, and that said board shall fix the term of office of said State Health Officer. In compliance with the provisions of said Section, the Medical Association of the State of Alabama which, under the authority contained in Section 1046, Code of Alabama, 1923, became the State Board of Health, fixed the term of office of the State Health Officer at five years.

Book of Rules, M. A. S. A., p. 139.

A careful reading of the Constitution of the Medical Association of the State of Alabama, together with all of the ordinances of said Association now in full force and effect, show that a fractional or unexpired term in said office is not recognized or provided for.

State v. W. H. Sanders, 187 Ala. 79
Clark v. State ex. rel. Glass, 177 Ala. 188.
Opinions of Attorney General, 1917, p. 103.

In answer to your second question, it is my opinion that the state health officer cannot be legally elected for a shorter term than five years.

See authorities supra.

In answer to your third question, I advise you that there is no authority of law which would make legal the election of the State health officer as secretary of the Board of Censors, under the facts as stated by you.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

September 29, 1928.

Hon. S. M. Dunwoody,
Commissioner, Department of Agriculture and Ind.,
Montgomery, Alabama.

Dear Sir:

Agricultural Code of 1927—Agent selling fertilizer subject to prosecution for violations of provisions of.

Contracts for sale of fertilizer.

Opinion by Assistant Attorney General Koonce.

I have your letter of July 11, 1928, in which you state that a manufacturer of fertilizer located in the State of Tennessee has violated Section 152, Article 17, of the Agricultural Code of 1927. You further state that the order for the fertilizer was taken by an agent of the company, who lives in the State of Alabama.

You request my opinion:

1. Can the Department of Agriculture take legal action against the agent of the manufacturer because the fertilizer was found to analyze less than was guaranteed on the analysis tag attached to each sack?

2. Would the fact that the order for the fertilizer was taken in the State of Alabama be considered as a sale made within the State?

In my opinion the agent making the sale is subject to prosecution under Section 158, Agricultural Code of 1927, in the event the agent had full authority in making the contract and to bind his principle. Should the agent not have full authority in the matter, and it was necessary for the contract to be ratified by the company in Tennessee, then in my opinion this would be a Tennessee contract and the agent would not be liable.

This principle of law is fully discussed in Section 72, p. 1255, Vol. 23, Ruling Case Law, contains the following:

"Sales Through Agents.—Where the seller resides and does business

in one jurisdiction and the buyer in another, and a sale is negotiated through an agent of the seller, the question as to the place of the contract of sale depends on the extent of the agent's authority to bind his principal and the nature of the order given by the buyer. If the order is taken by the agent subject to the approval of his principal and when transmitted to the principal is accepted by him at his place of business and the buyer so notified, and the property then delivered to a carrier for shipment to the buyer, the place of sale is deemed to be in the jurisdiction in which the seller resides; and the fact that payment is made by the buyer to the agent taking the order, at the buyer's place of residence, will not itself make the buyer's place of residence the place of sale. If, however, the agent has authority to bind his principal and enters into a binding contract of sale with the buyer at the latter's place of business, which he transmits to his principal to be filled by delivery to a carrier for shipment to the buyer, it has been held that the sale is deemed to be made in the jurisdiction in which the buyer does business. In such a case, however, it is difficult to understand how the buyer's place of business can be considered the place of sale, though it undoubtedly is the place of the executory contract sale. * * *"

You will observe that this would raise a question of fact and from the above it is impossible for me to ascertain whether or not the contract mentioned by you was made within this State unless I knew all of the facts in the case.

Yours truly,
CHARLIE C. McCALL,
Attorney General.

GENERAL SUMMARY OF CASES OF CIRCUITS, 1926-28

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Abandonment	4	1	1	2						
Abduction	1		1							
Abortion	4		1	2	1					
Abusive language	273	158	17	90	8			16	2	128
Accessory after fact	2	2						2		
Adultery	69	25	6	38				11	1	14
Affray	6	2		4						2
Aiding an escape	11	5		6				4		1
Aiding felon to escape	4	1		3			1			
Altering mark of cow	1			1						
Arson	47	16	13	17	1		14			1
Assault	54	28	7	19			1	7		15
Assault and battery	660	458	43	140	19			85	28	279
Assault and battery with weapon	211	170	8	30	3		2	29	7	113
Assault to murder	471	224	74	146	27		159	26		25
Assault to ravish	47	26	10	7	4		18	3		3
Assault to rob	30	25	1	3	1		23	2		2
Assault with weapon	199	144	18	30	7			36	7	79
Attempt to commit burglary	5	3		2			1		1	2
Attempt to commit larceny	5	5						2		3
Attempt to commit sodomy	1	1						1		

Attempt to communicate threat to commit arson	1	1							1
Attempt to defraud	3	3							3
Attempt to distill	318	317		1			28	9	264
Attempt to escape jail	3	1		2					1
Attempt to forge	1	1							1
Attempt to influence juror	1	1							1
Attempt to rob	8	8				6	2		
Attempt to wreck train	1	1				1			
Bail forfeiture	41	32			9				11
Bastardy	101	33	17	43	8	5	7		9
Bigamy	35	23	1	10	1	22	3		2
Blackmail	1	1					1		
Breach of peace	7	1		5	1				1
Breaking jail	1	1							1
Bribery	2	1		1		1			
Bringing stolen property into state	5	3		1	1	2	1		
Burglary	656	487	50	99	20	414	44	1	7
Burglary and grand larceny	132	66	9	43	14	22	10		5
Burglary of railroad car	1	1				1			
Burning forest	1			1					
Buying and concealing stolen property	2	1		1		1			
Carnal knowledge	124	32	25	59	8	21	2		3
Carrying concealed weapon	420	256	35	116	13	4	54	3	177
Changing name	1			1					
Compounding felony	1			1					
Concealing stolen property	18	12	1	5		7	2		4
Conspiracy to commit felony	10	1		9					
Conspiracy to commit grand larceny	1			1					
Contempt of court	10	8		2				2	2
Contributing to delinquincy of minor	33	12	2	19			5		5

GENERAL SUMMARY OF CASES OF CIRCUITS, 1926-28—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Crime against nature	3	3					3			
Cruelty to animal	4	2		2						2
Decoying child	8		2	6						
Defacing building of another	7	4		3						4
Defacing public building	13	10		2	1			1		9
Defamation	4	1		1	2					1
Delinquincy of minor	12	9		3				4		
Desertion	1			1						
Desertion and non-support	4	2		2				1		
Destroying fence	2	2								2
Destroying property	2	1	1							1
Detaining female	2	2					1	1		
Disorderly house	1	1								
Disposing mortgaged property	104	29	15	54	6		3	1	1	19
Disposing property under lien	1		1							
Distilling	1413	880	175	309	49		797	22	4	29
Disturbing assemblage of people	8	6	1	1						6
Disturbing religious worship	105	54	15	33	3			5	3	39
Disturbing woman	2	1		1						1
Driving spike into saw log	1	1								1
Driving while intoxicated	100	63	9	26	2			19	9	37

Dynamiting under dwelling	2			2						
Embezzlement	135	46	9	72	8		19	12		9
Enticing labor	2	1		1						1
Escape from custody	22	11		10	1		5	4		2
Escape from penitentiary	4	4					4			
Evading court summons	3	1	1	1						1
Failure to bury dead animal	1	1								
Failure to obey writ	1			1						
False pretense	174	66	15	78	15		26	13	2	12
Fighting in public place	1	1								1
Forgery	461	281	20	140	20		170	48	4	5
Fornication	1		1							
Fraud	1			1						
Fraudently packing cotton	1			1						
Gaming	105	38	14	27	26			1		36
Giving liquor to minor	1	1								1
Grand larceny	1252	747	104	340	61		564	151		19
Grand larceny and burglary	20	10		10			8	2		
Grand larceny and embezzlement	9	3		6			3			
Habeas corpus	1				1					
Homicide	3	2	1				2			
Impeachment	1	1								
Incest	6	4		2			3	1		
Influencing witness	1			1						
Injury to property	1			1						
Intimidating witness	1			1						
Juvenile delinquent	1	1								
Keeping gaming table	6		4	2						
Kidnapping	13	3	1	9			3			
Larceny	22	9	5	6	2		2	1	2	4

GENERAL SUMMARY OF CASES OF CIRCUITS, 1926-28—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Larceny and embezzlement	23			23						
Leaving wreck without stopping	5	3		2				1		2
Malicious injury to animal	4		3	1						
Malicious injury to property	2	1		1						
Malicious mischief	15	9	2	2	2			1		7
Manslaughter	190	165	10	15			114	31	9	15
Mayhem	1			1						
Miscegination	17	5	4	7	1		5			
Murder	452	251	116	70	15	14	209	3		7
Night walking	1	1						1		
Non-support	90	28	14	45	3		9	13	1	5
Obscene language	37	18	4	14	1			1	1	14
Obstructing railroad track	1				1					
Operating slot machine	28	16		11	1					16
Peace bond	1			1						
Peace proceedings	1				1					
Peonage	1			1						
Perjury	36	4	2	30			4			
Permitting still on premises	9	5		2	2			2		3
Petit larceny	667	504	40	111	12		74	202	71	192
Piloting ship without license	1	1								1

Placing poison on anothers premises	1				1					
Possessing burglary instruments	2			2						
Possessing liquor	2		1	1						
Possessing still	119	78	13	27	1		75			1
Possessing stolen property	2	2					2			
Practicing dentistry without license	1	1								
Practicing medicine without certificate	2	2								2
Practicing medicine without license	9	3	1	3	2					3
Practicing optometry	1	1								1
Presenting firearms	36	14	8	13	1			1	3	12
Profanity in presence of female	4	4								4
Public drunkness	349	205	42	90	12			8	2	166
Rape	32	11	9	10	2	1	8			2
Receiving deposits for bank	1				1					
Receiving stolen property	53	38	6	9			9	11	5	4
Reckless driving	241	126	29	72	13			21	6	94
Removing land mark	1			1						
Removing property under lien	13	2		7	4		1			1
Resisting arrest	21	2	2	17						2
Resisting officer	5			4	1					
Road default	37	16	5	16				2		13
Robbery	194	78	27	81	8		78			
Seduction	41	8	5	21	7		8			
Seining	5	3	1	1						3
Selling bad meat	1				1					
Selling property under lien	30	14	2	11	3		3	6	1	5
Sending threatening letter	2	1	1						1	
Shooting along highway	17	11	2	4				1	1	6
Shooting into dwelling	11	4	1	3	3			1		3
Slander	1		1							

GENERAL SUMMARY OF CASES OF CIRCUITS, 1926-28—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Sodomy	3	2			1		1	1		
Taking girl under fourteen for prostitution	2	2					2			
Temporary use of auto of another	1	1						1		
Temporary use of property	12	11		1				4		5
Throwing into dwelling	4	4								4
Transporting five gallons or more of whiskey	44	32	6	5	1		30	2		1
Transporting whiskey	24	16	4	3	1		15	1		
Trespass	58	21	15	22				5	2	13
Trespassing on state lands	5	5								5
Unlawful assemblage	1	1								1
Unlawful injury to animal	13	3	2	6	2					2
Unlawful injury to property	10	5	4	1					1	4
Unlawful use of property	1		1							
Unlawfully cutting timber	6	3		2	1					3
Unlawfully operating pool room	1	1								1
Unlawfully killing cow	1			1						
Unlawfully killing dog	7	2	3	2						2
Unlawfully marking hogs	1		1							
Using auto without owners consent	45	34	3	8				17	4	15
Vagrancy	349	83	31	213	22			21	12	42
Violating act ten section one agricultural code	1		1							

Violating auto law	108	73	12	19	4			11	3	57
Violating banking law	1		1							
Violating blue sky law	4	1		3						
Violating bread law	1			1						
Violating check law	119	48	7	49	15			18	4	26
Violating child labor law	11			11						
Violating election law	2		1		1					
Violating game law	105	28	12	58	7			7		14
Violating health law	1	1								1
Violating highway law	1		1							
Violating insurance law	1			1						
Violating prohibition law	4084	2230	341	1375	138		64	528	68	1522
Violating quarantine law	3		2	1						
Violating revenue law	79	32	11	33	3			1	3	23
Violating road law	15	7		1	7					3
Violating school law	25		16	7	2					
Violating section 3188, code 1923	1				1					
Violating section 3325, code 1923	4	3	1					3		1
Violating section 3452, code 1923	1		1							
Violating security law	1		1							
Violating shrimp law	4	2		2				2		
Violating stock law	123	85	14	21	3			2	4	78
Violating Sunday law	30	17	4	9						15
Violating sunset law	4	4								4
Violating tick law	103	10	5	62	26					9
Violating vehicle law	19		1	18						
Totals	16348	9302	1587	4782	677	15	3050	1609	288	3842

Percentage of convictions, 56.94. Predominant crime, violating prohibition law.

GENERAL SUMMARY OFF CASES IN CIRCUITS

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
FIRST CIRCUIT										
Choctaw County	162	78	19	55	10	.....	37	2	3	39
Clarke County	175	96	20	52	7	.....	20	13	.....	54
Washington County	120	67	20	31	2	.....	18	10	2	40
Totals	457	241	59	138	19	.....	75	25	5	133
SECOND CIRCUIT										
Butler County	113	86	9	16	2	.....	25	12	.....	42
Crenshaw County	103	64	13	20	6	1	11	9	1	39
Lowndes County	77	57	5	14	1	.....	31	12	.....	14

Totals	293	207	27	50	9	1	67	33	1	95
THIRD CIRCUIT										
Barbour County	148	106	18	24	.....	.....	30	10	.....	55
Bullock County	54	35	9	10	.....	.....	21	4	.....	11
Dale County	32	25	4	3	.....	1	14	2	1	5
Russell County	166	111	17	38	.....	.....	51	10	.....	51
Totals	400	277	48	75	.....	1	116	26	1	122
FOURTH CIRCUIT										
Bibb County	223	156	12	52	3	.....	42	34	11	96
Dallas County	401	295	19	67	20	.....	82	62	13	167
Hale County	198	146	9	39	4	1	16	26	10	118
Perry County	188	111	19	46	12	.....	28	24	2	66
Wilcox County	95	72	2	15	6	.....	18	16	5	46
Totals	1105	780	61	219	45	1	186	162	41	493

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
FIFTH CIRCUIT										
Chambers County	175	120	21	32	2	2	59	15	2	38
Lee County	183	143	8	26	6	1	101	23	1	26
Macon County	107	83	6	12	6	.....	54	10	.....	13
Randolph County	176	118	13	43	2	.....	50	9	1	53
Tallapoosa County	166	90	13	55	8	.....	43	7	.....	41
Totals	807	554	61	168	24	3	307	64	4	171
SIXTH CIRCUIT										
Tuscaloosa County	359	240	26	81	12	.....	71	73	8	144

Totals	359	240	26	81	12	.....	71	73	8	144
SEVENTH CIRCUIT										
Calhoun County	243	167	25	46	5	.....	.....	52	1	23
Cleburne County	105	65	12	28	.....	.....	40	4	.....	21
Talledega County	137	110	12	15	.....	.....	52	24	.....	32
Totals	485	342	49	89	5	.....	92	80	1	76
EIGHTH CIRCUIT										
Cullman County	128	53	16	42	17	.....	20	.....	1	30
Lawrence County	100	59	9	27	5	1	.....	1	43	14
Limestone County	86	46	15	22	3	.....	31	1	5	14
Madison County	312	142	47	110	13	.....	17	17	10	88
Morgan County	115	50	19	39	7	.....	31	1	.....	10
Totals	741	350	106	240	45	1	99	20	59	156

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
NINTH CIRCUIT										
Cherokee County	101	46	13	37	5	.....	9	5	1	22
DeKalb County	123	54	7	45	17	.....	35	.....	2	14
Jackson County	192	102	44	40	6	.....	49	9	1	18
Marshall County	186	88	12	80	6	.....	27	8	3	45
Totals	602	290	76	202	34	.....	120	22	7	99
TENTH CIRCUIT										
Jefferson County	3104	1320	238	1418	128	.....	364	406	11	448

Totals	3104	1320	238	1418	128	.....	364	406	11	448
ELEVENTH CIRCUIT										
Colbert County	264	95	59	102	8	.....	42	18	4	36
Franklin County	39	18	7	14	.....	.....	14	.....	1	.....
Lauderdale County	443	194	70	157	22	.....	66	19	5	78
Totals	746	307	136	273	30	.....	122	37	10	114
TWELFTH CIRCUIT										
Coffee County	255	150	30	55	20	.....	25	32	2	37
Covington County	78	45	4	20	9	.....	.....	10	7	.....
Pike County	145	66	22	49	8	.....	43	17	.....	21
Totals	478	261	56	124	37	.....	68	59	9	58

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
THIRTEENTH CIRCUIT										
Mobile County	1099	814	87	131	67	3	194	230	116	174
Totals	1099	814	87	131	67	3	194	230	116	174
FOURTEENTH CIRCUIT										
Fayette County	116	89	8	17	2	.....	14	10	2	77
Lamar County	170	130	20	19	1	.....	35	4	1	20
Marion County	119	87	11	21	.....	.....	17	1	.....	48
Walker County	245	168	33	44	.....	.....	27	15	1	108
Winston County	212	157	26	29	.....	.....	26	2	.....	107
Totals	862	631	98	130	3	.....	119	32	4	410

FIFTEENTH CIRCUIT										
Montgomery County	869	599	104	161	5	.....	309	117	5	179
Totals	869	599	104	161	5	.....	309	117	5	179
SIXTEENTH CIRCUIT										
Blount County	67	39	2	22	4	.....	15	1	4	17
Etowah County	430	164	35	211	20	.....	54	38	5	64
St. Clair County	119	51	15	46	7	.....	27	3	.....	20
Totals	616	254	52	279	31	.....	96	42	9	101
SEVENTEENTH CIRCUIT										
Greene County	152	104	13	35	.....	.....	7	3	.....	26
Marengo County	138	67	15	56	.....	.....	11	2	.....	16
Pickens County	116	89	4	14	9	.....	8	5	.....	27
Sumter County	109	70	7	28	4	.....	14	.....	.....	9
Totals	515	330	39	133	13	.....	40	10	.....	78

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
EIGHTEENTH CIRCUIT										
Clay County	232	130	13	86	3	.....	45	3	7	61
Coosa County	88	52	6	22	8	.....	19	7	5	29
Shelby County	213	121	11	70	11	.....	48	3	.....	68
Totals	533	303	30	178	22	.....	112	13	12	158
NINETEENTH CIRCUIT										
Autauga County	124	75	28	18	3	.....	33	10	2	25
Chilton County	321	209	15	89	8	.....	63	32	.....	182
Elmore County	215	151	19	31	14	.....	54	31	.....	34
Totals	660	435	62	138	25	.....	150	73	2	241

TWENTIETH CIRTUIT										
Geneva County	118	61	18	39	.....	.....	15	6	1	37
Henry County	85	49	11	25	.....	.....	11	3	1	35
Houston County	134	97	12	25	.....	1	28	12	.....	45
Totals	337	207	41	89	.....	1	54	21	2	117
TWENTY-FIRST CIRCUIT										
Baldwin County	126	55	6	44	21	.....	26	4	2	.....
Conecuh County	64	34	5	21	4	.....	11	15	.....	.....
Escambia County	118	50	12	41	15	.....	25	.....	.....	.....
Monroe County	68	36	5	24	3	.....	14	3	1	.....
Totals	376	175	28	130	43	.....	76	22	3	.....

GENERAL SUMMARY OF CASES IN CIRCUITS—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail	
TWENTY-SECOND CIRCUIT										
Covington County	161	114	15	28	4	.....	35	24	.....	55
Totals	161	114	15	28	4	.....	35	24	.....	55
TWENTY-THIRD CIRCUIT										
Madison County	855	351	91	331	82	.....	14	33	26	303
Totals	855	351	91	331	82	.....	14	33	26	303

Abusive language	3		3							
Assault and Battery	7	5	2					2		3
Assault to murder	4	4					4			
Bastardy	4		2		2					
Bigamy	1	1					1			
Burglary and grand larceny	1	1					1			
Carnal knowledge	2		1	1						
Carrying concealed weapon	4	2	2							2
Disposing mortgaged property	5	5								5
Desertion	1			1						
Distilling	15	11	3	1			8			
Disturbing religious worship	1	1								1
Embezzlement	3	3								2
Failure to bury dead animal	1	1								
Forgery	1	1					1			
Grand lanceny	9	7	1	1			7			
Malicious injury to animal	3		2	1						
Manslaughter	4	4					2			2
Murder	3	1	1	1			1			
Petit larceny	8	5	3					1	1	3
Possessing still	11	7	2	2			7			
Practicing medicine without certificate	2	2								2
Practicing medicine without license	1			1						
Receiving stolen property	2	1	1				1			
Reckless driving	4			4						
Road default	2			2						
Robbery	2		2							

CIRCUIT COURT OF AUTAUGA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Trespass	1		1							
Vagrancy	2			2						
Violating auto law	1	1								1
Violating check law	2	2						2		
Violating game law	2	1	1							1
Violating prohibition law	12	9	1	1	1			5	1	3
Totals	124	75	28	18	3		33	10	2	25

Percentage of convictions, 60.48. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BALDWIN COUNTY

Abusive language	4	3		1						
Assault	2			2						

Assault and battery	6	4		2						
Assault and battery with weapon	2	2								
Assault to murder	3	2	1				2			
Burglary and grand larceny	1	1					1			
Burglary	8	5		3			5			
Carrying concealed weapon	1			1						
Distilling	3	1		2			1			
Forgery	2			2						
Grand larceny	5	3		2			4			
Manslaughter	2	2					2			
Murder	4	3	1				3			
Obstructing railroad track	1				1					
Petit larceny	2	2						1	1	
Possessing still	6	2	2	2			2			
Presenting firearms	2	1		1						
Reckless driving	1	1								
Robbery	4	4					4			
Transporting whiskey	2	2					2			
Violating game law	1	1						1		
Violating prohibition law	33	16	2	15				2	1	
Violating road law	6				6					
Violating tick law	25			11	14					
Totals	126	55	6	44	21		26	4	2	

Percentage of convictions, 43.65. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BARBOUR COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Adultery	1		1							
Assault and battery	25	22	2	1				5		17
Assault to murder	4	1	2	1			1			
Attempt to commit larceny	1	1								1
Attempt to distill	6	6								6
Bastardy	1	1								1
Burglary	8	8					8			
Carnal knowledge	1			1						
Carrying concealed weapon	4	1	1	2						1
Distilling	7	6		1			6			
Disturbing religious worship	2	2								2
Driving while intoxicated	1	1								1
Embezzlement	1			1						
False pretense	2	2					2			
Forgery	3	1		2			1			
Grand larceny	11	7	3	1			7			
Manslaughter, first degree	2	1		1						
Murder, first degree	5	4	1				4			
Murder, second degree	2	1	1				1			
Night walking	1	1						1		

Petit larceny	15	9		6				2		7
Profanity in presence of female	3	3								3
Public drunkenness	6	6								6
Reckless driving	1	1								1
Seining	1		1							
Selling property under lien	1			1						
Unlawful injury to animal	1	1								1
Unlawfully cutting timber	1			1						
Violating auto law	6	5	1							5
Violating Check law	6	3	1	2						3
Violating Prohibition law	19	12	4	3				2		10
Totals	148	106	18	24			30	10		55

Percentage of convictions, 71.62. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BIBB COUNTY

Abusive language	10	5		5						5
Arson	1		1							
Assault and battery	16	11		5				3	1	11
Assault and battery with weapon	8	7		1				2		5
Assault to murder	13	8	1	4			7	1		
Attempt to distill	6	6						6		6
Attempt to escape jail	3	1		2						1

CIRCUIT COURT OF BIBB COUNTY —(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Attempt to rob	2	2						2		
Bastardy	1	1								
Burglary	5	2	1	2				2		
Carrying concealed weapon	7	6		1					1	6
Disposing mortaged property	1	1								1
Distilling	34	22	5	5	2		21			
Driving while intoxicated	1				1					
Embezzlement	1			1						
Evading court summons	1	1								1
False pretense	3			3						
Forgery	1	1						1		
Grand larceny	15	8	1	6			3	5		
Intimidating witness	1			1						
Manslaughter, first degree	1	1					1			
Murder, first degree	1			1						
Murder, second degree	3	2	1				2			
Petit larceny	15	11		4				2	8	11
Possessing still	7	7					7			
Public drunkenness	18	14		4						14
Rape	1			1						
Reckless driving	2	1		1						1

Seduction	1			1						
Selling property under lien	2	2					1	1		
Unlawfully killing dog	2		1	1						
Vagrancy	2	2						1		2
Violating check law	1	1								1
Violating game law	3	3								3
Violating prohibition law	31	27	1	3				8	1	27
Violating revenue law	1	1								1
Violating Sunday law	2	2								2
Totals	223	156	12	52	3		42	34	11	96

Percentage of convictions, 69.95. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BLOUNT COUNTY

Abusive language	1	1								1
Affray	1			1						
Assault and battery	7	5	1		1			1	4	4
Assault to murder	2	2					1			1
Attempt to distill	4	4								
Bail forfeiture	1	1								1
Breach of the peace	1	1								1
Burglary	1			1						
Distilling	10	5	1	4			5			

CIRCUIT COURT OF BLOUNT COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Driving while intoxicated	1	1								1
Embezzlement	1				1					
False pretense	2			2						
Grand larceny	2			2						
Kidnapping	7	2		5			2			
Manslaughter, first degree	5	5					5			
Murder	3	2		1			2			
Practicing dentistry without license	1	1								
Reckless driving	6	4		2						4
Removing property under lien	1				1					
Robbery	1			1						
Unlawful injury to animal	1			1						
Violating prohibition law	8	5		2	1					4
Totals	67	39	2	22	4		15	1	4	17

Percentage of convictions, 58.21. Predominant crime, violating prohibition law.

CIRCUIT COURT OF BULLOCK COUNTY

Assault and battery	4	3	1							3
Assault to murder	1	1					1			
Burglary	9	9					9			
Carnal knowledge	1		1							
Carrying concealed weapon	2		2							
Distilling	7	2		5			2			
Embezzlement	1	1					1			
Forgery	1			1						
Grand larceny	7	4	2	1			4			
Manslaughter, first degree	2	1		1			2			
Murder, second degree	3	1	2				1			
Petit larceny	3	2		1				1		1
Possessing still	1	1					1			
Profanity in presence of female	1	1								1
Seining	1	1								1
Temporary use of property	3	3						3		
Violating game law	3	2		1						2
Violating prohibition law	4	3	1							3
Totals	54	35	9	10			21	4		11

Percentage of convictions, 64.81. **Predominant crime, violating prohibition law.**

CIRCUIT COURT OF BUTLER COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Abusive language	1	1								1
Assault and battery	5	4	1							4
Assault to murder	5	4	1				4			
Assault to ravish	2	1	1				1			
Assault with weapon	6	4	1		1					
Bail forfeiture	1	1								1
Burglary	4	3		1			3			
Carrying concealed weapon	5	4		1				2		2
Distilling	11	8		2	1		8			
Forgery	1	1					1			
Grand larceny	6	6					6			
Manslaughter, first degree	1	1					1			
Manslaughter, second degree	1	1						1		
Miscegination	2		1	1						
Murder, second degree	2	1	1				1			
Operating slot machine	1	1								1
Petit larceny	15	14		1				3		11
Public drunkenness	1	1								1
Rape	1		1							

Road default	2			2						
Shooting along highway	4	4						1		
Temporary use of property	1	1								1
Trespass	2	1		1						1
Violating auto law	4	3		1				1		2
Violating game law	1			1						
Violating prohibition law	22	20	2					4		16
Violating sunset law	1	1								1
Violating tick law	5			5						
Totals	113	86	9	16	2		25	12		42

Percentage of convictions, 76.10. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CALHOUN COUNTY

Abortion	1				1					
Abusive language	1	1								1
Arson	2	2					1			
Assault	5	1	2	2						1
Assault and battery	1	1						1		
Assault to murder	7	5	1		1		4	1		
Assault with weapon	8	3	1	4						3
Attempt to distill	4	4								4
Bastardy	4	2	1	1						

CIRCUIT COURT OF CALHOUN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Bigamy	2	1		1			1	1		
Burglary	19	14	2	2	1		14			
Carnal knowledge	4	2	1		1		2			
Carrying concealed weapon	1			1						
Decoying child	1	1								
Desertion and non-support	4	2		2				2		
Disposing mortgaged property	2	2			1					
Distilling	20	18		2			7	11		
Disturbing religious worship	1			1						
Driving while intoxicated	1	1								1
Embezzlement	5	4		1			3	1		
False pretense	1	1					1			
Forgery	6	3		3			3			
Grand larceny	38	25	4	9			25			
Manslaughter, first degree	3	3					3			
Murder, first degree	2	1	1				1			
Murder, second degree	6	5		1			5			
Petit larceny	12	10		2				3	1	
Possessing still	1	1					1			
Practicing optometry	1	1								1

Public drunkenness	2	1	1							1
Reckless driving	3		2	1						
Robbery	3	3					3			
Seduction	1		1							
Transporting 5 or more gallons whiskey	6	5	1				5			
Vagrancy	1			1						
Violating check law	1	1								1
Violating game law	1		1							
Violating prohibition law	62	43	6	12				32		10
Totals	243	167	25	46	5			52	1	23

Percentage of convictions, 68.72. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHAMBERS COUNTY

Abusive language	4	3		1						2
Adultery	1	1								1
Assault and battery	5	5						1		4
Assault to murder	15	6	6	3			6			
Assault with weapon	2	2						1		2
Bail forfeiture	1	1								1
Bastardy	4	2		2						1
Bigamy	2	2					2			
Bribery	1	1					1			
Burglary	13	10	1	1	1		10			

CIRCUIT COURT OF CHAMBERS COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Carnal knowledge	3	2		1			2			
Carrying concealed weapons	4	3		1				1		2
Concealing stolen property	1	1					1			
Disposing mortaged property	3	1	1	1						1
Distilling	28	18	5	4	1		18			
Driving while intoxicated	1	1								1
Embezzlement	4	1		3			1			
False pretense	1			1						
Grand larceny	14	10	2	2			10			
Manslaughter, first degree	2	2					2			
Murder	8	8	1	1		2	4			
Perjury	1			1						
Petit larceny	6	5						2		3
Possessing still	1	1					1			
Public drunkenness	1			1						
Receiving stolen property	1	1								
Reckless driving	2	2								2
Resisting arrest	1			1						
Sodomy	1	1					1			
Using auto without owner's consent	1	1								1

Violating auto law	4	3	1					2		1
Violating prohibition law	38	25	4	8				8	2	15
Violating revenue law	1	1								1
Totals	175	120	21	32	2	2	59	15	2	38

Percentage of convictions, 68.57. Predominating crime, violating prohibition law.

CIRCUIT COURT OF CHEROKEE COUNTY

Abusive language	5	5						1		2
Assault	3	1		2				1		1
Assault and battery	4	3		1						3
Assault to murder	4	2		2			2			
Assault to ravish	1		1							
Assault to rob	2			1	1					2
Assault with weapon	4	3	1							1
Bastardy	5	4	1							
Burglary	1			1						2
Carnal knowledge	1			1						
Compounding felony	1			1						
Defacing building of another	1	1								1
Disposing mortaged property	1			1						
Distilling	12	6	1	4	1		6			
Disturbing assemblage of people	3	1	1	1						1
Disturbing religious worship	5	2	1	2						2

CIRCUIT COURT OF CHEROKEE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Embezzlement	1			1						
Forgery	2		1	1						
Grand larceny	1		1							
Manslaughter	2	1		1				1		
Murder, second degree	1	1					1			
Petit larceny	5	3		2				2	1	1
Public drunkenness	8	6	1	1						2
Rape	1				1					
Reckless driving	2	1		1						1
Selling property under lien	2		2							
Shooting into dwelling	1				1					
Transporting 5 or more gallons whiskey	1		1							
Trespass	1		1							
Violating check law	1			1						
Violating prohibition law	19	6		12	1					3
Totals	101	46	13	37	5		9	5	1	22

Percentage of convictions, 45.54. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CHILTON COUNTY

Abusive language	9	9							9
Assault and battery	17	11	2	2	2		4		7
Assault with weapon	2	1		1					1
Assault to murder	2	2				1	1		
Bail forfeiture	2	2							2
Bastardy	1			1					
Burglary and grand larceny	4	3			1	3			
Carnal knowledge	1			1					
Carrying concealed weapon	10	7		3					7
Decoying child	1			1					
Defamation	1	1							1
Destroying fence	2	2							2
Disposing mortgaged property	3			3					
Disturbing religious worship	5	4	1						4
Distilling	41	39	1	1		35			
Driving while intoxicated	2	2					1		1
False pretense	1			1					
Forgery	6	6				6			
Grand larceny	8	5		2	1	4	1		
Grand larceny and embezzlement	7	1		6		1			
Manslaughter	3	3				3			
Murder	1	1				1			
Petit larceny	11	8	1		2		4		6

CIRCUIT COURT OF CHILTON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Possessing still	5	5					5			
Practicing medicine without license	1			1						
Presenting firearms	2		1	1						
Public drunkenness	11	7	2	2						7
Rape	2	2					2			
Reckless driving	9	6		3						6
Road default	3	3								3
Transporting whiskey	2	2					2			
Trespass	2	1		1						1
Using auto without owner's consent	1			1						
Vagrancy	1				1					
Violating auto law	2			2						
Violating prohibition law	96	73	3	20				21		59
Violating school law	1				1					
Violating tick law	43	3	4	36						3
Totals	321	209	15	89	8		63	32		182

Percentage of convictions, 65.11. Predominating crime, violating prohibition law.

CIRCUIT COURT OF CHOCTAW COUNTY

Abusive language	5	5								5
Altering mark of cow	1			1						
Arson	1		1							
Assault and battery	11	8	3					1		8
Assault to murder	6	1		4	1					
Assault with weapon	1			1						
Attempt to distill	7	7								7
Bastardy	1			1						
Bigamy	1			1						
Burglary	3		1	2						
Carrying concealed weapon	5	1		4						1
Distilling	23	18		1	4		18			
Embezzlement	1	1								1
False pretense	4	1		3						1
Grand larceny	12	1	5	6			1			1
Manslaughter, first degree	4	4					4			2
Manslaughter, second degree	5	5					3	1	1	
Murder, second degree	14	11		3			11			
Petit larceny	13	4	4	5					2	4
Presenting fire arms	3	1	2							
Public drunkenness	1			1						
Reckless driving	3	1		2						1
Road default	1			1						
Seduction	1			1						
Temporary use of property	4	3		1						2
Trespass	1	1								1

CIRCUIT COURT OF CHOCTAW COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Unlawful injury to animal	1				1					
Unlawful injury to property	1			1						
Violating automobile law	1			1						
Violating check law	3			3						
Violating game law	6			6						
Violating prohibition law	17	4	3	6	4					4
Violating revenue law	1	1								1
Totals	162	78	19	55	10		37	2	3	39

Percentage of convictions, 48.15. Predominating crime, violating prohibition law.

CIRCUIT COURT OF CLARKE COUNTY

Abandonment	1			1						
Abusive language	11	6		5						6

Adultery	2			2						
Arson	1	1					1			
Assault and battery	6	2	1	3				1		2
Assault to murder	4	1	1	2			1			
Assault with weapon	14	14								6
Attempt to distill	13	13								13
Attempt to rob	1	1					1			
Bastardy	3	2	1							
Bigamy	1			1						
Burglary	3	1		2			1			
Carnal knowledge	2	1		1				1		
Carrying concealed weapon	9	7		2				2		6
Distilling	14	9	1	3	1		6	2		
Disturbing religious worship	5	2	1	2						2
Embezzlement	3			3						
False pretense	2			2						
Grand larceny	10	7	2	1			4	3		
Manslaughter, first degree	3	3					2			1
Manslaughter, second degree	1	1					1			
Murder	6	3	1	2			3			
Petit larceny	13	8	3	2				3		5
Public drunkenness	1			1						
Reckless driving	4	2	1	1				1		1
Receiving stolen property	1			1						
Seduction	1		1							
Shooting along public road	1	1								1
Temporary use of property	1	1								1
Trespass	1		1							
Unlawful injury to animal	2	1			1					1
Unlawfully marking hogs	1	1								

CIRCUIT COURT OF CLARKE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Vagrancy	1			1						
Violating automobile law	3	2	1							2
Violating check law	4			4						
Violating game law	4			2	2					
Violating insurance law	1			1						
Violating prohibition law	19	7	4	5	3					7
Violating revenue law	2			2						
Totals	175	96	20	52	7		20	13		54

Percentage of convictions, 54.85. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CLAY COUNTY

Abusive language	5	3		2						3
Adultery	2	1		1						1
Assault and battery	3			3						

Assault to murder	4			4					
Assault to ravish	1			1					
Assault with weapon	6	6							2
Attempt to distill	54	54							37
Bastardy	3		1	1	1				
Bigamy	1	1				1			
Burglary	10	7		3		7			
Carnal knowledge	11			11					
Carrying concealed weapon	4			4					
Concealing stolen property	1			1					
Defacing public building	1	1							1
Disposing mortgaged property	2		1	1					
Distilling	61	26	5	30		26			
False pretense	2			2					
Forgery	2			2					
Gaming	1			1					
Grand larceny	5	5				5			
Injury to property	1			1					
Leaving wreck without stopping	1	1							1
Manslaughter	1	1				1			
Murder	3	1	2			1			
Perjury	4	3		1		3			
Petit larceny	9	7		2				7	5
Public drunkenness	5	2		2	1				2
Reckless driving	3			3					
Resisting arrest	2			2					
Road default	1		1						
Robbery	1			1					
Seduction	1	1				1			
Trespass	1			1					

CIRCUIT COURT OF CLAY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Using auto without owner's consent	1	1								1
Violating game law	1		1							
Violating prohibition law	15	8	1	5	1			3		7
Violating revenue law	3	1	1	1						1
Totals	232	130	13	86	3		45	3	7	61

Percentage of convictions, 56.03. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CLEBURNE COUNTY

Abusive language	3	2		1						2
Assault	2		2							
Assault to ravish	2	2						2		
Assault with weapon	2	2								2

Bigamy	1	1					1			
Breaking jail	1	1								1
Burglary	1	1					1			
Carrying concealed weapon	1			1						
Distilling	68	36	8	24			36			
Disturbing religious worship	1	1								1
Murder, second degree	1	1					1			
Possessing still	1	1					1			
Robbery	1			1						
Violating prohibition law	20	17	2	1				2		15
Totals	105	65	12	28			40	4		21

Percentage of convictions, 61.90. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COFFEE COUNTY

Abusive language	3	3								
Aiding an escape	1	1								1
Arson	1		1							
Assault	3	1		2						1
Assault and battery	15	10	2	3				3		2
Assault to murder	11	4	4	3			4			
Assault to rob	1			1						
Bail forfeiture	9				9					
Bastardy	5			4	1					

CIRCUIT COURT OF COFFEE COUNTY—(Conctinued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Burglary	5	5					5			
Carnal knowledge	1	1					1			
Carrying concealed weapons	17	13	2	2				9		6
Contributing to delinquency of minor	3	2	1					1		
Cruelty to animals	1			1						
Disposing of mortgaged property	3	2		1						1
Disturbing religious worship	2	2						1	2	
Embezzlement	3	1		2						
False pretense	4	3		1			1	1		
Forgery	3	3					1			
Gaming	7				7					
Grand larceny	10	3	5	1	1			1		
Malicious mischief	1	1								
Manslaughter, first degree	4	4					4			
Miscegination	1			1						
Murder, first degree	1		1							
Murder, second degree	6	4	2				4			
Petit larceny	5	2		3				2		
Possessing still	3	3					3			
Public drunkenness	15	4	1	9	1					2
Removing property under lien	1			1						

Road default	1			1						
Seduction	3	1		2			1			
Violating auto law	6	3	2	1				1		1
Violating blue sky law	2			2						
Violating check law	3	2			1			1		1
Violating game law	4	1	1	2				1		
Violating health law	1	1								1
Violating prohibition law	80	63	7	10			1	32		19
Violating revenue law	4	3	1							2
Violating road law	4	4								
Violating stock law	2			2						
Totals	255	150	30	55	20		25	32	2	37

Percentage of convictions, 58.82. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COLBERT COUNTY

Abusive language	5	2		3				1		5
Adultery	2	1	1					1		
Aiding escape	1			1						
Arson	1		1							
Assault	7	7						3		4
Assault and battery with weapon	10	9		1				3		7
Assault to murder	15	4	5	6			2	2		

CIRCUIT COURT OF COLBERT COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Assault to ravish	1	1					1			
Bastardy	4	2	1	1						
Burglary	11	3	3	1	4		3			
Carrying concealed weapon	4	1		3						1
Defacing building of another	3	1		2						1
Defacing public building	1			1						
Disposing mortgaged property	3			3						
Distilling	45	13	9	21	2		13			
Disturbing religious worship	1				1					
Driving while intoxicated	1	1								1
Embezzlement	3			3						
False pretense	4	2		2			2			
Forgery	8	6	2				6			
Gaming	1		1							
Grand larceny	12	6		6			6			
Keeping gaming table	3		3							
Manslaughter, first degree	1		1							
Manslaughter, second degree	1	1						1		
Murder	7	5	1	1			5			
Perjury	1			1						

Petit larceny	6	4		2					3	2
Possessing still	4	1	1	2			1			
Practicing medicine without license	1	1								1
Public drunkenness	7	1	4	2						1
Rape	2		2							
Receiving stolen property	1		1							
Reckless driving	6	2	2	2						2
Robbery	11	3	2	6			3			
Seduction	3		1	2						
Shooting into dwelling	2		1	1						
Slander	1		1							
Unlawful injury to animal	1		1							
Vagrancy	12	3	2	6	1			1		3
Violating check law	3	2		1				1		1
Violating game law	1			1						
Violating prohibition law	45	13	12	20				5	1	7
Violating revenue law	1			1						
Violating Sunday law	1		1							
Totals	264	95	59	102	8		42	18	4	36

Percentage of convictions, 35.98. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CONECUH COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Abusive language	1	1								
Assault and battery	3	2		1				3		
Assault and battery with weapon	6	5		1				3		
Assault to rob	2	1	1				1			
Carrying concealed weapon	2	1		1						
Disposing mortgaged property	1			1						
Distilling	3	2		1			2			
Disturbing religious worship	1			1						
False pretense	1			1						
Grand larceny	2	1		1			1			
Malicious injury to property	2	1		1						
Manslaughter	5	5					2	5		
Murder	5	3	2				3			
Perjury	3			3						
Petit larceny	1	1								
Possessing still	1			1						
Reckless driving	1			1						
Removing property under lien	1	1					1			
Temporary use of property of another	1			1						
Trespass	1		1							
Violating check law	1			1						

Violating game law	1				1					
Violating prohibition law	17	10	1	3	3		1	4		
Violating revenue law	1			1						
Violating Sunday law	1			1						
Totals	64	34	5	21	4		11	15		

Percentage of convictions, 53.12. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COOSA COUNTY

Abusive language	3	2		1						2
Adultery	4	2		2				2		2
Assault and battery	3	3						1		3
Assault to murder	4	3		1				3		
Assault to ravish	1			1						
Assault with weapon	3	3								3
Attempt to distill	12	12								12
Bastardy	4	2	1	1				1		1
Burglary	7	6	1				6			
Burglary and grand larceny	4				4					
Carrying concealed weapon	1	1								1
Distilling	14	10		3	1		10		4	
False pretense	2			2						
Forgery	2	1		1			1			
Grand larceny	1			1						
Larceny	9	1	1	6	1				1	1

CIRCUIT COURT OF COOSA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Manslaughter	2		2							
Murder	5	2		2	1		2			
Public drunkenness	1	1								1
Rape	2			1	1					
Reckless driving	1	1								1
Violating check law	1		1							
Violating prohibition law	2	2								2
Totals	88	52	6	22	8		19	7	5	29

Percentage of convictions, 59.09. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COVINGTON COUNTY

Abusive language	7	4	1	1	1					4
Adultery	2			2						
Assault and battery	1			1						

Assault to murder	2	1		1			1			
Burglary	4	2		1	1		2			
Burning forest	1			1						
Carrying concealed weapon	4	3		1				1		2
Distilling	9	3	1	3	2		3			
Disturbing religious worship	1			1						
Escape from custody	2	1			1			1		
Grand larceny	4	3		1			3			
Murder	2	2					1			
Non-support	2	2								2
Petit larceny	2	2						1		
Removing property under lien	1				1					
Violating automobile law	1		1							
Violating check law	1			1						
Violating fish law	3	1	1	1				1		
Violating prohibition law	28	20		5	3			3		18
Violating road law	1	1								1
Totals	78	45	4	20	9		10	7		27

Percentage of convictions, 57.69. Predominant crime, violating prohibition law.

CIRCUIT COURT OF COVINGTON COUNTY
(Created into new circuit in 1927)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Abusive language	5	4		1						3
Adultery	2		1	1						
Arson	3		2	1						
Assault and battery	13	5	2	6				1		4
Assault and battery with weapon	2	2								2
Assault to murder	3	2	1				2			
Assault to ravish	2	2					2			
Bastardy	1	1						1		
Burglary	1				1					
Carnal knowledge	2		1		1					
Carrying concealed weapon	8	4	2	2						3
Defamation	1			1						
Disorderly house	1	1								
Disposing mortaged property	2	2								1
Distilling	13	13					13			
Disturbing religious worship	3	3						1		2
Escape from custody	2	2						2		
Escape from penitentiary	4	4					4			
Failure to obey writ	1			1						
False pretense	1			1						
Forgery	2	2					2			

Grand larceny	4	3	1				3			
Manslaughter	1	1					1			
Murder	8	7	1				7			
Non-support	1	1						1		
Petit larceny	4	4						2		
Reckless driving	1	1								1
Road default	4	2	1	1						2
Seduction	1	1					1			
Using auto without owner's consent	2	1		1						1
Violating check law	2	1		1						1
Violating prohibition law	61	45	3	11	2			16		35
Totals	161	114	15	28	4		35	24		55

Percentage of convictions, 70.81. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CRENSHAW COUNTY

Abusive language	2	1			1					1
Arson	1			1						
Assault and battery	8	7		1				4		3
Assault to murder	2	2								
Bail forfeiture	3	3								3
Burglary	2			1	1					
Carrying concealed weapon	5	2	2	1				1		1
Defacing public building	1	1								1

CIRCUIT COURT OF CRENSHAW COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Disposing mortgaged property	2	1		1						1
Distilling	7	1	1	4	1		1			
Disturbing religious worship	1	1						1		
False pretense	2			1	1					
Forgery	1			1						
Grand larceny	4			3	1					
Manslaughter, first degree	5	4	1				4			
Murder, first degree	4	3	1			1	2			
Murder, second degree	5	4	1				4			
Petit larceny	2		1	1						
Presenting fire arms	2	1	1							
Receiving stolen property	1			1						
Road default	1	1								1
Seduction	1		1							
Selling property under lien	1	1						1		
Temporary use of property	1	1								
Trespass	1			1						
Unlawfully cutting timber	2	2								2
Violating automobile law	5	4		1					1	4
Violating check law	1	1								1

Violating prohibition law	30	23	4	2	1			2		21
Totals	103	64	13	20	6	1	11	9	1	39

Percentage of convictions, 62.18. Predominant crime, violating prohibition law.

CIRCUIT COURT OF CULLMAN COUNTY

Abusive language	2	1		1						1
Assault and battery	5	5								5
Assault to murder	3		1	1	1					
Assault to ravish	1				1					
Assault to rob	3	2		1			2			
Assault with weapon	2	2								2
Attempt to distill	2	2								2
Bigamy	1			1						
Burglary	3	2		1			2			
Carnal knowledge	1			1						
Carrying concealed weapon	2	1		1						1
Distilling	29	10	5	10	4		10			
Disturbing religious worship	1			1						
Driving while intoxicated	1		1							
Embezzlement	2			2						
False pretense	10	1		3	6					1
Forgery	2			1	1					
Grand larceny	4	1	1	2			1			

CIRCUIT COURT OF CULLMAN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid
						Death.	Penitentiary.	Hard Labor.	Jail.	
Malicious mischief	1	1								1
Manslaughter	2	2					2			
Murder	9	3	4	2			3			
Non-support	1	1							1	
Operating slot machine	6	5		1						5
Presenting fire arms	1	1								1
Public drunkenness	5	2	1	1	1					
Resisting arrest	1		1							
Road default	2			2						
Seduction	2			2						
Vagrancy	3	1			2					1
Violating check law	1				1					
Violating prohibition law	18	9	2	7						9
Violating Sunday law	2	1		1						
Totals	128	53	16	42	17		20		1	30

Percentage of convictions, 41.41. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DALE COUNTY

Abusive language	2	1	1					1		
Arson	3	3					3			
Assault and battery	3	2		1				1		1
Assault to ravish	3	3					3			
Burglary	2	2					2			
Carrying concealed weapon	1	1								1
Distilling	1	1								
False pretense	1	1					1			
Forgery	1	1					1			
Grand larceny	3	3					2			
Manslaughter, first degree	1			1						
Manslaughter, second degree	1	1							1	
Murder, first degree	3	2	1			1	1			
Murder, second degree	1	1					1			
Petit larceny	2	2								2
Reckless driving	1		1							
Violating prohibition law	3	1	1	1						1
Totals	32	25	4	3		1	14	2	1	5

Percentage of convictions, 78.12. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DALLAS COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Abandonment	1			1						
Abusive language	2	1	1							1
Aiding felon to escape	2			2						
Arson	1		1							
Assault	1	1						1		1
Assault and battery	10	9		1					1	9
Assault and battery with weapon	17	17					2	2	1	15
Assault to murder	13	9	2	1	1		6	2		
Attempt to distill	2	2						1		2
Bastardy	2			2						
Bigamy	3	3					1	2		
Burglary	15	12	1	2			8	4		
Carnal knowledge	4	2	1		1		2			
Carrying concealed weapon	47	40	2	3	2			11	1	36
Contempt of court	1	1								1
Defacing building	1	1								1
Distilling	15	9	4		2		9			

Driving automobile while intoxicated	4	4						1	4
Embezzlement	1	1							1
Escape from custody	1	1							1
False pretense	8	3		5			1	1	2
Forgery	7	7				5	2		
Grand larceny	51	41		8	2	31	10		
Malicious mischief	1				1				
Manslaughter, first degree	1	1				1			
Manslaughter, second degree	3	1		2				1	1
Miscegination	3	1	2			1			
Murder, first degree	5	2	2	1		2			
Murder, second degree	6	4	1	1		4			
Perjury	1			1					
Petit larceny	9	5		3	1		4	1	1
Permitting still on premises	3	3					2		1
Possessing still	14	10		3	1	10			
Practicing medicine without license	3	1			2				1
Presenting fire arms	1			1					
Public drunkenness	2	1		1					
Receiving stolen property	2	1		1			1		
Reckless driving	7	4		2	1				4
Robbery	2		1	1					
Selling property under lien	2	2					1	1	2
Sodomy	1				1				
Temporary use of property	2	2							2
Trespass	4	4					1		4
Unlawful injury to property	1		1						1
Vagrancy	1	1							1
Violating automobile law	11	11					1		11
Violating check law	1			1					

CIRCUIT COURT OF DALLAS COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Violating prohibition law	103	74	.....	24	5	.....	.....	16	5	61
Violating sunset law	3	3	.....	.....	.....	.....	.....	.....	.....	3
Totals	401	295	19	67	20	.....	82	62	13	167

Percentage of convictions, 73.56. Predominant crime, violating prohibition law.

CIRCUIT COURT OF DeKALB COUNTY

Abusive language	1	1	.....	.....	.....	.....	.....	.....	.....	1
Arson	1	.....	.....	1	.....	.....	.....	.....	.....	.....
Assault	2	.....	.....	2	.....	.....	.....	.....	.....	.....
Assault and battery	3	3	.....	.....	.....	.....	.....	.....	.....	3
Assault to murder	8	3	.....	3	2	.....	2	.....	.....	.....
Assault to ravish	4	1	1	1	1	.....	.....	.....	.....	1

Assault with weapon	2	2								2
Bastardy	3	1		2						
Burglary	9	6		3			6			
Carnal knowledge	3	1	1	1			1			
Disposing mortaged property	3			3						
Distilling	23	21		2			21			
Embezzlement	2			2						
False pretense	4	1	1	2			1			
Forgery	16	2		5	9				2	2
Gaming	1			1						
Grand larceny	6	3	1	1	1		1			
Incest	1	1					1			
Manslaughter	1	1					1			
Murder, first degree	2		2							
Murder, second degree	4	1	1	2			1			
Perjury	3			3						
Permitting still on premises	3			2	1					
Petit larceny	3	3								2
Public drunkenness	6	1		2	3					1
Robbery	2			2						
Violating prohibition law	7	2		5						2
Totals	123	54	7	45	17		35		2	14

Percentage of convictions, 43.90. Predominant crime, violating prohibition law.

CIRCUIT COURT OF ELMORE COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Arson	1	1					1			
Assault and battery	13	8	2	3				1		7
Assault to murder	12	10	1		1		3	2		2
Assault to ravish	1	1					1			
Assault with weapon	2			1	1					
Bastardy	4	3			1		1			2
Burglary	2	2					2			
Burglary and grand larceny	25	19	2	2	2					
Carrying concealed weapon	3	1		1	1			1		
Concealing stolen property	1	1					1			
Defacing public building	1	1								1
Disposing mortgaged property	3		1	2						
Distilling	24	19	3	1	1		16	3		
Escape from custody	2	1		1						1
False pretense	4		1	2	1					
Forgery	2	2					2			
Grand larceny	32	23	2	4	3		16	2		

Manslaughter	1		1							
Murder	12	10		2			10			
Petit larceny	8	7		1				2		3
Possessing still	3	3					3			
Reckless driving	3	2	1							2
Removing property under lien	1			1						
Robbery	2	1	1				1			
Temporary use of auto of another	1	1						1		
Unlawful injury to animal	1			1						
Vagrancy	1				1					
Violating automobile law	1	1								1
Violating game law	2	2								2
Violating prohibition law	46	32	4	8	2			19		13
Violating stock law	1			1						
Totals	215	151	19	31	14		54	31		34

Percentage of convictions, 70.23. Predominant crime, violating prohibition law.

CIRCUIT COURT OF ESCAMBIA COUNTY

Abduction	1		1							
Abusive language	3	2		1						
Assault and battery	8	4	1	3						
Assault and battery with weapon	12	6	2	3	1					
Assault to murder	4			4						

CIRCUIT COURT OF ESCAMBIA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Assault to rob	1	1					1			
Burglary	13	11		1	1		11			
Carnal knowledge	4			4						
Carrying concealed weapons	2		1	1						
Disposing mortgaged property	1			1						
Distilling	1			1						
Disturbing religious worship	1	1								
Forgery	3	2		1			2			
Grand larceny	6	3	1	1	1		3			
Murder	3		2	1						
Perjury	1			1						
Petit larceny	4	1	1	2						
Possessing still	2	1	1				1			
Possessing stolen property	2	2					2			
Public drunkenness	3	1		2						
Reckless driving	1	1								
Robbery	2	2					2			
Temporary use of property of another	1	1								
Transporting 5 gallons or more whiskey	3	3					3			
Unlawful injury to animal	1	1								

Vagrancy	2			2						
Violating banking law	1		1							
Violating game law	1	1								
Violating prohibition law	13	4		9						
Violating revenue law	2	1	1							
Violating tick law	16	1		3	12					
Totals	118	50	12	41	15		25			

Percentage of convictions, 42.37. Predominant crime, violating tick law.

CIRCUIT COURT OF ETOWAH COUNTY

Abusive language	27	14		12	1			5		9
Adultery	3	1		2				1		
Aiding escape	1	1						1		
Arson	1	1								
Assault and battery	36	16		19	1			1		14
Assault to murder	11	5	1	5			1	4		
Assault to ravish	2			2						
Attempt to commit burglary	2	1		1					1	1
Attempt to distill	1	1								1
Bastardy	4			4						
Breach of the peace	4			3	1					
Burglary	8	6		2			5			
Carnal knowledge	9		1	7	1					

CIRCUIT COURT OF ETOWAH COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Carrying concealed weapons	4			4						
Contributing to delinquency of minor	1			1						
Decoying child	3			3						
Disposing mortgaged property	13	1	1	10	1					
Distilling	26	8	5	12	1		5	1		2
Disturbing religious worship	16	1	3	11	1				1	
Disturbing woman	2	1		1						1
Driving while intoxicated	2			2						
False pretense	2	1		1			1			
Forgery	12	3	2	7			1	2		
Grand larceny	54	26	2	21	5		16	9		2
Grand larceny and burglary	20	10		10			8	2		
Grand larceny and embezzlement	2	2					2			
Manslaughter	2	2						2		
Murder	7	3	4				2	1		
Non-support	3		1	1	1					
Perjury	2	1		1			1			
Petit larceny	17	8	3	6				3	3	3
Possessing still	9	4	1	4			2			
Presenting fire arms	2			2						

Public drunkenness	20	9	2	9				2		6
Reckless driving	8	3	1	3	1					3
Removing property under lien	1				1					
Robbery	12	10		2			10			
Seduction	6			5	1					
Selling property under lien	6	2		3	1					2
Shooting along public highway	1			1						
Throwing into dwelling	4	4								4
Unlawfully killing cow	1			1						
Vagrancy	2		1	1						
Violating automobile law	2			2						
Violating check law	6			6						
Violating game law	1			1						
Violating prohibition law	43	16	5	19	3			4		14
Violating revenue law	1	1								1
Violating stock law	7	2	2	3						1
Violating Sunday law	1			1						
Totals	430	164	35	211	20		54	38	5	64

Percentage of convictions, 38.14. Predominant crime, violating prohibition law.

CIRCUIT COURT OF FAYETTE COUNTY

Abusive language	5	3		2						3
Assault and battery	18	15	1	2				1		15

CIRCUIT COURT OF FAYETTE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Attempt to distill	9	9								9
Carnal knowledge	1	1						1		1
Carrying concealed weapon	1	1								1
Defacing building of another	1	1								1
Distilling	8	6	1	1			4			4
Disturbing religious worship	6	4		2						4
False pretense	1	1					1			
Forgery	1	1					1			
Grand larceny	10	7	1	2			3			4
Larceny	5	4			1		1	1	1	3
Manslaughter, first degree	1	1					1			
Murder	1	1					1			
Petit larceny	5	4		1					1	4
Possessing still	1	1					1			
Public drunkenness	7	5		2						5
Reckless driving	2	2								2
Road default	2	1		1						1
Seduction	1	1					1			
Violating prohibition law	29	19	5	4	1			7		19
Violating stock law	1	1								1

Totals	116	89	8	17	2		14	10	2	77

Percentage of convictions, 76.72. Predominant crime, violating prohibition law.

CIRCUIT COURT OF FRANKLIN COUNTY

Assault with weapon	1	1							1	
Assault to murder	1	1								
Carnal knowledge	1	1					1			
Disposing mortgaged property	1			1						
Distilling	21	11	7	3			9			
Embezzlement	5			5						
False pretense	1			1						
Manslaughter, first degree	1	1					1			
Murder, second degree	1	1					1			
Perjury	2			2						
Possessing still	1	1					1			
Rape	1	1					1			
Robbery	1			1						
Seduction	1			1						
Totals	39	18	7	14			14		1	

Percentage of convictions, 46.15. Predominant crime, violating prohibition law.

CIRCUIT COURT OF GENEVA COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Abusive language	1	1								1
Adultery	1			1						
Assault	1			1						
Assault and battery	5	2	1	2				1		1
Assault and battery with weapon	5	5						1		4
Assault to murder	1	1					1			
Bastardy	4	2	2					1		1
Burglary	7	1	3	3						1
Carnal knowledge	4		3	1						
Carrying concealed weapons	3	3								3
Distilling	4	4					4			
False pretense	3		1	2						
Forgery	3	3					3			
Grand larceny	9	4	1	4			4			
Manslaughter	1	1								1
Murder	2	2					2			
Non-support	2	1		1				1		
Petit larceny	9	7		2						7

Possessing still	4	3		1			3			
Public drunkenness	3	3								3
Reckless driving	1	1							1	
Removing property under lien	1			1						
Road default	1	1								1
Robbery	1		1							
Seduction	1		1							
Trespass	2		1	1						
Using auto without owner's consent	1			1						
Violating automobile law	1	1								1
Violating game law	9	1		8						1
Violating prohibition law	25	14	2	9				2		12
Violating quarantine law	3		2	1						
Totals	118	61	18	39			15	6	1	37

Percentage of convictions, 51.69. Predominant crime, violating prohibition law.

CIRCUIT COURT OF GREENE COUNTY

Abusive language	1	1								1
Assault and battery	9	9								2
Assault and battery with weapon	13	12		1						1
Assault to murder	3	2		1			1			
Attempt to distill	10	10								4
Bail forfeiture	6	6								

CIRCUIT COURT OF GREENE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Burglary and grand larceny	1			1						
Carrying concealed weapon	18	14		4						2
Defacing public building	1	1								1
Disposing mortgaged property	1			1						
Distilling	6	3	1	2			3			
False pretense	1			1						
Forgery	1			1						
Grand larceny	5	3	1	1			1			
Manslaughter	2	2					1	1		
Murder	2	1	1				1			
Petit larceny	16	10	6							2
Presenting fire arms	3	2	1							2
Reckless driving	6	4	2					2		2
Resisting arrest	1			1						
Shooting along public highway	1	1								
Shooting into dwelling	1	1								1
Unlawful injury to animal	1			1						
Using auto without owner's consent	1			1						
Violating check law	1			1						
Violating prohibition law	40	22	1	17						8

Violating road law	1			1						
Totals	152	104	13	35			7	3		26

Percentage of convictions, 68.42. Predominant crime, violating prohibition law.

CIRCUIT COURT OF HALE COUNTY

Abusive language	4	4								4
Adultery	2	2								2
Arson	1			1						
Assault and battery	7	6		1						6
Assault and battery with weapon	30	20	3	7				3	2	24
Assault to murder	4	4					3	1		
Attempt to distill	6	6								6
Burglary	2	1			1					
Carrying concealed weapon	17	14		2	1			4	1	14
Contempt of court	1	1								
Disposing mortgaged property	5	2	3							2
Distilling	6	1		5			1			
Disturbing assemblage of people	2	2								2
Driving while intoxicated	1	1						1		1
Embezzlement	1	1								1
Enticing labor	1	1								1
Evading court summons	1			1						
False pretense	2			2						

CIRCUIT COURT OF HALE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Forgery	1	1					1			
Gaming	8	8								8
Grand larceny	16	12	2	2			7	5		
Manslaughter, first degree	4	4					4			
Miscegination	1				1					
Murder, first degree	3	2		1		1				
Petit larceny	12	8		4				3	3	3
Possessing still	1			1						
Public drunkenness	1	1								1
Receiving stolen property	1	1							1	1
Reckless driving	4	4								3
Shooting into dwelling	1	1								1
Unlawful injury to animal	1			1						
Using auto without owner's consent	2	2								2
Violating auto law	1	1								1
Violating check law	2	2								2
Violating game law	3	1		2						1
Violating prohibition law	43	32	1	9	1			9	3	32

Totals	198	146	9	39	4	1	16	26	10	118

Percentage of convictions, 73.73. Predominant crime, violating prohibition law.

CIRCUIT COURT HENRY COUNTY

Adultery	1	1						1		
Assault and battery	2		1	1						
Assault and battery with weapon	8	8								8
Assault to murder	4	2	1	1			1	1		
Burglary	3	1	1	1			1			
Carrying concealed weapons	3	2	1							2
Disposing mortgaged property	1			1						
Distilling	4	4					4			
Embezzlement	1			1						
False pretense	2			2						
Forgery	2			2						
Fraud	1			1						
Grand larceny	3	1	1	1			1			
Manslaughter	2	2					2			
Murder	3	1		2			1			
Perjury	2			2						
Petit larceny	2	2								2
Possessing still	3	1	2				1			
Road default	2	1	1							1
Seduction	1			1						

CIRCUIT COURT OF HENRY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Seining	2	1		1						1
Shooting across public highway	1	1							1	1
Vagrancy	2			2						
Violating game law	2		2							2
Violating highway law	1		1							
Violating prohibition law	26	18	2	6				1		17
Violating Sunday law	1	1								1
Totals	85	49	11	25			11	3	1	35

Percentage of convictions, 57.64. Predominant crime, violating prohibition law.

CIRCUIT COURT OF HOUSTON COUNTY

Abusive language	6	4	1	1				1		3
Arson	2	2					2			

Assault and battery	7	7						2		5
Assault and battery with weapon	11	11						1		10
Assault to murder	5	4	1				4			
Attempt to forge	1	1								1
Burglary	8	5		3			5			
Carnal knowledge	2			2						
Carrying concealed weapon	1	1						1		
Disposing mortgaged property	2	2								2
Disposing property under lien	1		1							
Disturbing religious worship	1			1						
Embezzlement	1			1						
False pretense	4	1		3						1
Forgery	4	3	1				3			
Grand larceny	15	11	1	3			10			
Influencing witness	1			1						
Manslaughter	4	4					3	1		
Murder	5	5				1	4			
Petit larceny	7	7						2		5
Possessing still	2		1	1						
Public drunkenness	5	3		2						3
Transporting whiskey	2	2					1	1		
Trespass	1			1						
Using auto without owner's consent	2	1	1							1
Violating prohibition law	34	23	5	6				3		14
Totals	134	97	12	25		1	28	12		45

Percentage of convictions, 72.38. Predominant crime, violating prohibition law.

CIRCUIT COURT OF JACKSON COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Abusive language	1			1						
Adultery	1			1						
Aiding prisoner to escape	1			1						
Assault	14	6	2	6			1	1		2
Assault to murder	4	2	2				2			
Assault with weapon	1	1						1		
Bastardy	1	1								1
Bigamy	1				1					
Burglary	22	17	1	4			15			
Carnal knowledge	5	4		1			2			
Carrying concealed weapon	3	1		1	1					1
Defacing public building	1				1					
Disposing mortgaged property	1			1						
Distilling	54	24	24	4	2		18			
Disturbing religious worship	2	1		1						
Embezzlement	1	1					1			
False pretense	2	1		1						

Forgery	2	2					1			1
Gaming	1	1						1		
Grand larceny	5	3		2			3			
Homicide	3	2	1				2			
Larceny	8	4	4				1			
Murder	2	1	1				1			
Petit larceny	1	1						1		
Public drunkenness	9	5	1	3						4
Rape	2	2					2			
Resisting arrest	1			1						
Seduction	1			1						
Shooting into dwelling	1			1						
Trespass	2		1	1						
Violating game law	1			1						
Violating prohibition law	36	21	6	8	1		5	1		8
Violating stock law	1		1							
Violating Sunday law	1	1								1
Totals	192	102	44	40	6		49	9	1	18

Percentage of convictions, 53.12. Predominant crime, violating prohibition law.

CIRCUIT COURT OF JEFFERSON COUNTY

Abusive language	11		1	10						
Adultery	5			5						

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Aiding an escape	2			2						
Arson	4			4						
Assault and battery	71	38	3	27	3			26		13
Assault and battery with weapon	10	2	1	5	2			1		1
Assault to murder	65	8	11	40	6		8			
Assault to ravish	4	3			1		1			
Assault to rob	16	16					15	1		
Attempt to distill	30	30						3		27
Attempt to commit sodomy	1	1						1		
Attempt to steal	2	2						2		
Bastardy	12			12						
Bigamy	2	1		1			1			
Blackmail	1	1						1		
Breach of peace	2			2						
Burglary	143	103	6	30	4		80	23		
Burglary and grand larceny	58	13	6	32	7		10	3		
Buying and receiving stolen property	43	31		12			13	17		
Carnal knowledge	15		7	7	1					
Carrying concealed weapons	9	1	1	6	1					
Changing name	1			1						

Conspiracy to commit felony	10	1		9						
Contempt of court	5	5							2	
Contributing to delinquency of minor	18	1	1	16						
Distilling	66	18	15	31	2		18			
Dynamiting under dwelling	2			2						
Embezzlement	43	11	2	25	5		3	7		1
False pretense	25	12	2	9	2		3	6		3
Forgery	174	108	3	61	2		34	27		
Gaming	2	1		1						1
Grand larceny	381	170	31	154	26		115	55		
Impeachment	1	1								
Incest	1	1					1			
Malicious mischief	2		1	1						
Manslaughter, first degree	15	13	1	1			12	1		
Manslaughter, second degree	18	11	1	6				10		1
Murder	85	24	29	28	4	3	21			
Non-support	59	9	10	38	2			9		1
Operating slot machine	1				1					
Perjury	4			4						
Petit larceny	137	116	3	16	2			106	6	21
Placing poison on another's premises	1				1					
Practicing medicine without license	1			1						
Presenting fire arms	1			1						
Public drunkenness	12	6	1	3	2					6
Rape	4	1		3						2
Reckless driving	23	8	2	12	1			1	2	5
Removing property under lien	2			2						
Resisting arrest	4			4						
Robbery	97	22	14	54	7		22			
Selling property under lien	2	1		1						1

CIRCUIT COURT OF JEFFERSON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Sodomy	1	1						1		
Transporting whiskey	13	7	4	2			7			
Trespass	1			1						
Using auto without owner's consent	8	5	1	2				3	1	4
Vagrancy	171	14	10	139	8			8		6
Violating automobile law	1	1						1		
Violating blue sky law	2	1		1						
Violating check law	46	18	2	14	12			12		7
Violating child labor law	11			11						
Violating game law	6			3	3					
Violating prohibition law	1134	483	69	559	23			81		348
Violating revenue law	3			3						
Violating school law	2			2						
Violating stock law	2			2						
Totals	3104	1320	238	1418	128	3	364	406	11	448

Percentage of convictions, 42.53. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAMAR COUNTY

Abusive language	1	1								1
Adultery	2	2								2
Aiding felon to escape	1	1					1			
Assault and battery	18	16		2				3		7
Assault to murder	6	6					6			
Assault to ravish	3	1	1	1				1		
Bastardy	1		1							
Bigamy	1	1					1			
Burglary	11	9		1	1		9			
Carnal knowledge	1	1					1			
Carrying concealed weapon	5	4		1						2
Disposing mortgaged property	1			1						
Distilling	24	20	2	2			16			4
Disturbing religious worship	2	1		1						1
Driving while intoxicated	1	1								1
Embezzlement	1		1							
False pretense	2		2							
Fornication	1		1							
Grand larceny	1			1						
Murder, second degree	3		2	1						
Petit larceny	12	12							1	7
Possessing liquor	2		1	1						
Public drunkenness	28	22	4	2						17
Reckless driving	2	2								1
Resisting arrest	1		1							
Seduction	1	1					1			

CIRCUIT COURT OF LAMAR COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Trespass	1	1								1
Using auto without owner's consent	2	2								
Violating prohibition law	35	26	4	5						26
Totals	170	130	20	19	1		35	4	1	70

Percentage of convictions, 76.47. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAUDERDALE COUNTY

Abandonment	1		1							
Abusive language	13	5		8				1		4
Adultery	1			1						
Affray	2			2						
Assault and battery	5	3		2						3
Assault to murder	9	4		5			3	1		

Assault to ravish	1		1							
Assault with weapon	23	12	4	6	1					6
Bail forfeiture	5	5								
Bastardy	5			4	1					
Bigamy	3	1	1	1			1			
Burglary	14	5	5	3	1		5			
Carnal knowledge	3		1	1	1					
Carrying concealed weapon	8	3	2	2	1					3
Decoying child	1		1							
Detaining female	1	1					1			
Disposing mortgaged property	9	1		5	3		1			
Distilling	53	26	15	11	1		26			
Disturbing religious worship	7	3	3	1						3
Driving while intoxicated	2	2								2
Embezzlement	3		3							
False pretense	7	5	1	1			4			
Forgery	11	3	1	6	1		3			
Gaming	1	1								1
Giving liquor to minor	1	1								1
Grand larceny	19	10	1	4	4		10			
Kidnapping	4	1		3			1			
Manslaughter	4	4					4			
Murder	11	3	6	2			2	1		
Non-support	2	1		1				1		1
Perjury	1			1						
Petit larceny	17	9		7	1			3	3	3
Possessing burglary instruments	2			2						
Possessing still	9	4	2	3			4			
Public drunkenness	27	12	4	11						12
Receiving stolen property	2	2						2		1

CIRCUIT COURT OF LAUDERDALE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Reckless driving	7	4	1	2						3
Removing property under lien	1				1					
Resisting arrest	1	1								1
Road default	2			2						
Robbery	1		1							
Shooting along public highway	1	1								1
Transporting whiskey	3	1		1	1		1			
Trespass	9		1	8						
Unlawfully cutting timber	2			1	1					
Unlawful injury to animal	1		1							
Unlawfully killing dog	1		1							
Using auto without owner's consent	3	2		1				2		
Vagrancy	46	24	8	14				1		11
Violating automobile law	2	1		1				1		
Violating bread law	1			1						
Violating check law	1	1								1
Violating game law	2			1	1					
Violating prohibition law	65	29	5	28	3			6	2	18
Violating school law	3			3						
Violating stock law	1			1						
Violating Sunday law	3	3								3

Totals	443	194	70	157	22	.....	66	19	5	78

Percentage of convictions, 43.79. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LAWRENCE COUNTY

Assault and battery	4	3	.....	1	.....	.....	.....	.....	.....	3
Assault to murder	10	6	.....	2	2	.....	6	.....	.....	.....
Assault to rob	2	2	.....	.....	.....	.....	2	.....	.....	.....
Assault with weapon	1	1	.....	.....	.....	.....	.....	.....	.....	1
Attempt to distill	8	8	.....	.....	.....	.....	.....	.....	.....	8
Burglary	13	8	.....	4	1	.....	8	.....	.....	.....
Defacing public building	1	1	.....	.....	.....	.....	.....	.....	.....	1
False pretense	1	1	.....	.....	.....	.....	1	.....	.....	.....
Forgery	2	2	.....	.....	.....	.....	2	.....	.....	.....
Grand larceny	9	4	.....	4	1	.....	4	.....	.....	.....
Murder	7	4	1	1	1	1	3	.....	.....	.....
Perjury	1	.....	1	.....	.....	.....	.....	.....	.....	.....
Petit larceny	1	1	.....	.....	.....	.....	.....	1	.....	.....
Seduction	1	1	.....	.....	.....	.....	1	.....	.....	.....
Violating prohibition law	39	17	7	15	.....	.....	16	.....	.....	1
Totals	100	59	9	27	5	1	43	1	.....	14

Percentage of convictions, 59. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LEE COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Abusive language	1	1								1
Arson	1		1							
Assault and battery	2			2						
Assault to murder	6	4		2			4			
Assault with weapon	4	3			1			1		3
Bail forfeiture	6	6								
Bastardy	1			1						
Bigamy	1	1					1			
Bringing stolen property into state	3	2			1		2			
Burglary	24	21	1	1	1		20			
Carnal knowledge	2	1		1			1			
Concealing stolen property	1			1						
Disposing mortgaged property	4	1	1	2						
Distilling	48	45	1		2		45			
Embezzlement	5	2	1	2			1			
False pretense	2	2						2		
Forgery	1	1								

Grand larceny	17	14		2	1		14	2		
Manslaughter, second degree	1	1						1		
Murder	9	8	1			1	7			
Petit larceny	9	6		3				3	1	2
Possessing still	2	2					2			
Rape	1			1						
Receiving stolen property	1	1								1
Reckless driving	1		1							
Robbery	4	4					4			
Using auto without owner's consent	2	2						2		1
Violating automobile law	1	1								1
Violating prohibition law	23	14	1	8				8		7
Totals	183	143	8	26	6	1	101	23	1	26

Percentage of convictions, 78.14. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LIMESTONE COUNTY

Assault	1	1						1		
Assault and battery	2	2							2	
Assault to murder	6	2	1	2	1		2			2
Assault with weapon	1	1								1
Attempt to distill	2	2								2
Bribery	1			1						
Burglary	8	7		1			7			
Defacing public building	1	1								1

CIRCUIT COURT OF LIMESTONE COUNTY—(Continued

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
False pretense	1	1					1			
Forgery	5	2		3			2			
Grand larceny	4	4					4			
Manslaughter, second degree	2	1		1					1	1
Murder	5	1	2	1	1		1			
Perjury	3			3						
Petit larceny	2	2							2	2
Practicing medicine without license	1		1							
Public drunkenness	2	2								2
Rape	3	1	1	1			1			
Reckless driving	2	1	1							1
Robbery	1		1							
Selling property under lien	1	1					1			
Trespass	1			1						
Violating prohibition law	31	14	8	8	1		12			2
Totals	86	46	15	22	3		31	1	5	14

Percentage of convictions, 53.48. Predominant crime, violating prohibition law.

CIRCUIT COURT OF LOWNDES COUNTY

Assault and battery	1		1							
Assault and battery with weapon	2	2						1		1
Assault to murder	4	4					3	1		
Burglary	8	7	1				6	1		
Carrying concealed weapon	3	3						1		2
Decoying child	1		1							
Distilling	17	6	1	10			4	2		
Forgery	1	1					1			
Grand larceny	8	8					7	1		
Manslaughter, first degree	2	2					1	1		
Murder, first degree	7	4		2	1		4			
Murder, second degree	5	5					5			
Petit larceny	10	10						4		6
Temporary use of property	1	1								1
Violating automobile law	1	1								1
Violating game law	2		1	1						
Violating prohibition law	4	3		1						3
Totals	77	57	5	14	1		31	12		14

Percentage of convictions, 53.48. Predominant crime, violating prohibition law.

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Accessory after fact	2	2						2		
Arson	1		1							
Assault and battery	3	3						3		
Assault to murder	10	9			1		9			
Assault with weapon	6	6								6
Bail forfeiture	1	1								
Burglary	9	9					9			
Carrying concealed weapon	3	2		1						2
Disposing mortgaged property	3	1	1		1		1			
Distilling	10	5		5			5			
Embezzlement	2				2					
False pretense	4	2		2				1		1
Forgery	3	3					3			
Grand larceny	20	19		1			18			
Manslaughter, first degree	3	3					3			
Manslaughter, second degree	1	1					1			
Murder, first degree	1				1					
Murder, second degree	5	5					5			
Petit larceny	4	4								4
Public drunkenness	2	2						2		
Reckless driving	1				1					

Robbery	1			1						
Violating prohibition law	12	6	4	2				2		2
Totals	107	83	6	12	6		54	10		13

Percentage of convictions, 77.57. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MADISON COUNTY

Adultery	1	1						1	1	
Arson	1				1					
Assault and battery with weapon	13	6		7					3	3
Assault with weapon	3	1		2				1		
Attempt to distill	1	1								1
Bastardy	1		1							
Burglary	13	10	2	1			8			
Carnal knowledge	2	1	1				1			
Carrying concealed weapon	11	5	2	4				1		3
Concealing stolen property	1	1						1		
Defamation	1				1					
Distilling	2	2					2			
Disturbing religious worship	3	2	1					2		

CIRCUIT COURT OF MADISON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Evading court summons	1		1							
Forgery	1		1							
Gaming	9	5	3	1						5
Kidnapping	1			1						
Malicious mischief	4	2	1		1			1		1
Manslaughter	1	1					1			
Murder	4	3		1			2	1		
Obscene language	8	4	2	2					1	3
Peace bond	1			1						
Petit larceny	1				1					
Public drunkenness	7	3	1	3				1		2
Reckless driving	19	2	3	14						2
Resisting arrest	5			5						
Road default	1			1						
Selling property under lien	2			1	1					
Unlawfully killing dog	1	1								1
Vagrancy	4	1	1	2						
Violating automobile law	5	5								2
Violating prohibition law	171	83	23	57	8		3	8	5	63
Violating revenue law	11	2	3	6						2

Violating school law	2		1	1						
Totals	312	142	47	110	13		17	17	10	88

Percentage of convictions, 45.51. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MADISON COUNTY

(Created new circuit in 1927)

Adultery	11	2	1	8						2
Aiding an escape	1			1						
Assault	2	2								2
Assault and battery	13	5		6	2					4
Assault to murder	4		1	2	1					
Assault to ravish	1			1						
Assault with weapon	18	6	8	4						6
Attempt to commit burglary	1	1								1
Attempt to distill	1	1								1
Attempt to rob	1	1					1			
Burglary	1		1							
Burglary and grand larceny	5	3		2			3			
Carnal knowledge	1		1							
Carrying concealed weapon	45	22	3	15	5			2		21
Concealing stolen property	1			1						
Cruelty to animals	1	1								1

CIRCUIT COURT OF MADISON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Disposing mortgaged property	2			2						
Distilling	5	1	4				1			
Disturbing religious worship	2			2						
Driving while intoxicated	25	3	6	15	1					3
Embezzlement	5	4		1						
False pretense	5	2	1	1	1		1	1		1
Fighting in public place	1	1								1
Forgery	2	2					2			
Gaming	49	3	7	20	19					2
Grand larceny	5	3	2				3			
Incest	1	1						1		
Leaving scene of accident	4	2		2				1		1
Malicious mischief	4	4								4
Manslaughter	1	1						1		
Miscegination	2	2					2			
Murder	2	1	1				1			
Obscene language	26	12	2	11	1					10
Peace proceedings	1				1					
Petit larceny	8	6		2				2	4	6
Public drunkenness	16	3	2	10	1					3
Rape	1		1							
Receiving stolen property	1			1						

Reckless driving	41	22	2	12	5			1		22
Removing property under lien	1			1						
Resisting officer	5			4	1					
Robbery	2			2						
Seining	1	1								1
Shooting across public road	2			2						
Temporary use of property of another	1	1						1		
Transporting 5 gallons or more whiskey	1		1							
Trespass	3	1	1	1				1		1
Vagrancy	27	4	4	12	7			2		3
Violating automobile law	2	1		1						1
Violating check law	2			2						
Violating game law	5	1	2	2						
Violating prohibition law	450	216	24	175	35			20	22	199
Violating revenue law	22	9	2	9	2			1		7
Violating school law	15		14	1						
Totals	855	351	91	331	82		14	33	26	303

Percentage of convictions, 39.66. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARENGO COUNTY

Abusive language	3	1	2							1
Arson	1	1					1			

CIRCUIT COURT OF MARENGO COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Assault and battery	7	7						2		2
Assault and battery with weapon	4	4								
Assault to murder	2	1		1						
Burglary	9	4	1	4						
Carrying concealed weapons	9	6		3						2
Disposing mortgaged property	1			1						
Distilling	3	2		1						
Enticing labor	1			1						
False pretense	3		1	2						
Grand larceny	18	11		7			2			
Manslaughter	1	1								1
Murder	8	5	2	1			3			
Petit larceny	8	6		2						
Possessing still	5	5					5			
Public drunkenness	4	2	2							1
Shooting across public highway	1		1							
Unlawfully using property	1		1							
Violating game law	1		1							
Violating prohibition law	14	5	1	8						3
Violating school law	1		1							
Violating tick law	14	6	1	7						6

Violating vehicle law	19		1	18						
Totals	138	67	15	56			11	2		16

Percentage of convictions, 48.55. Predominant crime, violating vehicle law.

CIRCUIT COURT OF MARION COUNTY

Abusive language	5	2	1	2						1
Adultery	1	1								1
Arson	1	1					1			
Assault and battery	11	9	2							7
Assault to murder	1	1								1
Attempt to distill	1	1								
Attempt to rob	2	2					2			
Bastardy	1	1								1
Burglary	5	4	1				3			
Carrying concealed weapons	4	2	1	1						
Distilling	18	13	1	4			6			6
Disturbing religious worship	3	3								1
Driving while intoxicated	1	1								1
Embezzlement	1			1						
Forgery	1	1					1			
Miscegination	1		1							
Murder, second degree	3	2	1				2			
Petit larceny	5	3		2						2

CIRCUIT COURT OF MARION COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Presenting fire arms	1			1						
Public drunkenness	14	13		1						10
Reckless driving	2	2								
Robbery	2	2					2			
Trespass	2	2								1
Violating game law	1			1						
Violating prohibition law	32	21	3	8				1		16
Totals	119	87	11	21			17	1		48

Percentage of convictions, 73.11. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MARSHALL COUNTY

Abortion	2			2						
Abusive language	10	1	2	7				1		
Adultery	6	3		3						2

Affray	1			1						
Assault	1		1							
Assault and battery	5	1	1	3						1
Assault to murder	2			2						
Assault with weapon	6	6						2		5
Bastardy	2	1			1			1		
Carnal knowledge	5	4		1						
Carrying concealed weapon	5	3		2						2
Contempt of court	1	1								1
Delinquency of minor	1			1						
Disposing of mortgaged property	2	1		1						1
Distilling	18	12	1	5			12			
Driving while intoxicated	2	2								2
Embezzlement	2	1		1						
False pretense	4		2	2						
Forgery	15	8		7			8			
Fraudulently packing cotton	1			1						
Gaming	8	6		2						6
Grand larceny	7	5		2			4			
Manslaughter, first degree	1	1					1			
Murder, second degree	1	1								
Operating slot machine	1			1						
Petit larceny	10	3	1	6					3	3
Public drunkenness	9	3	1	5				1		3
Rape	2	1	1				1			
Reckless driving	1			1						
Road default	3	3						2		1
Seduction	3	2		1			2			
Shooting into dwelling	2			1	1					

CIRCUIT COURT OF MARSHALL COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to Death.	Penitentiary.	Hard Labor.	Jail.	Fines Paid or Secured.
Trespass	2			2						
Unlawful injury to animal	1			1						
Unlawful injury to property	1		1							
Violating check law	3			3						
Violating prohibition law	31	13		15	3			1		12
Violating road law	1				1					
Violating Sunday law	8	6	1	1						6
Totals	186	88	12	80	6		28	8	3	45

Percentage of convictions, 47.31. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MOBILE COUNTY

Abusive language	13	8			5			4	2	2
Adultery	4	3		1				2		
Affray	2	2								2

Arson	4	3		1			2			
Assault and battery	71	48	5	8	10			20	18	10
Assault to murder	17	10	3	1	3		10			
Assault to ravish	2	2					2			
Assault to rob	3	3					2	1		
Assault with weapon	42	36	2	2	2			21	5	10
Attempt to distill	22	22						4	9	9
Bigamy	1	1					1			
Burglary	65	61	2	1	1		44	9		
Burglary and grand larceny	20	18		2			12	6		
Burglary of railroad car	1	1					1			
Carnal knowledge	4		2	1	1					
Carrying concealed weapons	8	5	1	2				3	1	1
Crime against nature	3	3					3			
Cruelty to animals	2	1		1						1
Decoying child	1			1						
Defamation	1				1					
Distilling	67	42	10	12	3		42			
Disturbing religious worship	1				1					
Driving while intoxicated	43	35	2	5	1			16	8	11
Embezzlement	11	6	2	3			2	4		
False pretense	3	2			1		2			
Forgery	55	51	1	1	2		40	2	1	
Grand larceny	104	90	6	6	2		66	23		
Kidnapping	1		1							
Manslaughter, first degree	8	8					6	1	1	
Manslaughter, second degree	4	3		1				2	1	
Mayhem	1			1						

CIRCUIT COURT OF MOBILE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Murder, first degree	6	5			1	3	2			
Murder, second degree	7	7					7			
Petit larceny	32	27		2	3			14	13	
Piloting ship without license	1	1								1
Presenting firearms	5	2		2	1				1	1
Public drunkenness	3	3						1	2	
Rape	2			2						
Receiving stolen property	20	18		2			6	8	4	
Reckless driving	22	11	5	3	3			4	2	5
Resisting arrest	1	1								1
Robbery	16	13	1	1	1		13			
Seduction	5				5					
Selling property under lien	4	3			1			3		
Shooting along public highway	2	1	1							1
Transporting 5 gallons or more whiskey	12	11			1		9	2		
Trespass	12	7	5					4	2	1
Unlawful assembly	1	1								1
Unlawful injury to property	6	4	2						1	3
Using auto without owner's consent	16	15	1					9	3	3
Vagrancy	24	14	1	6				2	10	2
Violating act 10, section 1, agricultural code	1		1							

Violating automobile law	22	12	4	2	4			4	1	7
Violating check law	6	5			1			1	4	
Violating game law	4	4						4		
Violating prohibition law	148	89	14	38	7			50	20	19
Violating revenue law	22	10	2	9	1				3	7
Violating school law	1				1					
Violating sec. 3188, code of 1923	1				1					
Violating sec. 3325, code of 1923	3	2	1					2		
Violating sec. 3452, code of 1923	1		1							
Violating shrimp law	4	2		2				2		
Violating stock law	108	82	11	12	3			2	4	76
Totals	1099	814	87	131	67	3	194	230	116	174

Percentage of convictions, 74.07. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MONTGOMERY COUNTY

Abusive language	1			1						
Aiding an escape	1			1						
Arson	3		1	2						
Assault and battery	35	27		8				6	2	19
Assault to murder	33	16	8	9			14	2		
Assault to ravish	3	2	1				2			
Assault with weapon	1	1						1		

CIRCUIT COURT OF MONTGOMERY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Attempt to burglarize	2	1		1			1			
Attempt to rob	2	2					2			
Bigamy	2	2					2			
Bringing stolen property into state	1	1						1		
Burglary	53	43	6	4			39	4		
Burglary and grand larceny	2			2						
Carnal knowledge	1	1					1			
Carrying concealed weapon	34	22	3	8	1		2	7		17
Contributing to delinquency of minor	11	9		2				4		5
Disposing mortgaged property	4	3	1				1	1		1
Distilling	35	25	5	5			25			
Driving while intoxicated	2	2								2
Embezzlement	7	5		2			5			
Escape from custody	15	6		9			5	1		
False pretense	9	2	2	5			2			
Forgery	28	21	3	4			15	6		
Gaming	10	7	3							7
Grand larceny	116	90	8	18			75	15		
Manslaughter	5	4	1				4			
Murder	18	14	4				10			4
Non-support	18	13	3	2			9	1		3

Perjury	1			1						
Petit larceny	98	88	4	6			71	6		11
Presenting firearms	4		2	2						
Rape	4		3	1						
Receiving stolen property	6	2	1	3			1			1
Reckless driving	15	10	3	1	1			5		5
Robbery	17	11	1	5			11			
Sending threatening letter	1	1							1	
Shooting along public highway	1			1						
Using auto without owner's consent	1	1						1		
Vagrancy	23	11		12				5	2	4
Violating prohibition law	244	154	41	46	3		12	51		96
Violating revenue law	1	1								1
Violating road law	1	1								1
Totals	869	599	104	161	5		309	117	5	179

Percentage of convictions, 68.93. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MONROE COUNTY

Abusive language	1	1								
Adultery	2		1	1						
Assault and battery with weapon	2	1	1							
Assault to murder	4	1		2	1		1			
Assault to ravish	1	1					1			

CIRCUIT COURT OF MONROE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Assault with weapon	3	1	1	1						
Bigamy	1	1					1			
Burglary	4	3	1				3			
Carrying concealed weapon	5	3		2				1		
Disposing mortgaged property	1			1						
Distilling	2	2					2			
Forgery	3	2		1			2			
Grand larceny	1	1					1			
Incest	1			1						
Malicious injury to animal	1		1							
Manslaughter	1	1						1		
Murder	2	2					2			
Petit larceny	4	3		1					1	
Possessing still	6			6						
Seduction	1			1						
Unlawful injury to property	1	1								
Vagrancy	1			1						
Violating game law	6			6						
Violating prohibition law	14	12			2			1		

Totals	68	36	5	24	3		14	3	1	

Percentage of convictions, 52.94. Predominant crime, violating prohibition law.

CIRCUIT COURT OF MORGAN COUNTY

Arson	1		1							
Assault	1	1								
Assault and battery	6	6								6
Assault to murder	6		2	3	1					
Assault to ravish	1	1					1			
Attempt to distill	2	2								2
Burglary	6	4	1		1		4			
Carnal knowledge	1			1						
Disposing mortgaged property	1		1							
Distilling	38	21	4	13			15			
Embezzlement	4			4						
False pretense	1		1							
Forgery	8	2	2	4			2			
Grand larceny	11	4	1	3	3		3			
Manslaughter	2	2					2			
Miscegination	2			2						
Murder	9	4	3	1	1		4			
Peonage	1			1						
Petit larceny	3	3						1		2
Robbery	1		1							

CIRCUIT COURT OF MORGAN COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Seduction	3			2	1					
Selling property under lien	5			5						
Violating securities law	1		1							
Violating Sunday law	1		1							
Totals	115	50	19	39	7		31	1		10

Percentage of convictions, 43.48. Predominant crime, distilling.

CIRCUIT COURT OF PERRY COUNTY

Abusive language	4	3		1						3
Arson	2			2						
Assault and battery	4	3	1							3
Assault and battery with weapon	12	9		3				1		9
Assault to murder	6	4	1	1			3	1		

Attempt to communicate threat to commit arson	1	1								1
Attempt to distill	1	1						1		1
Burglary	7	4	3				3	1		
Carrying concealed weapons	15	8	1	6				3		5
Concealing stolen property	6	3	1	2				1		3
Defacing public building	2	2								2
Disposing mortgaged property	2	1		1						1
Distilling	24	12	3	5	4		12			
Driving while intoxicated	2	1		1						1
Embezzlement	1	1								1
False pretense	4	1		3						1
Forgery	2	2					1	1		
Grand larceny	12	10		2			2	8		
Manslaughter, first degree	1	1					1			
Miscegination	2			2						
Murder, second degree	3	3					3			
Permitting still on premises	3	2			1					1
Petit larceny	2	1		1					1	1
Possessing still	3	3					3			
Presenting fire arms	2		1	1						
Public drunkenness	4	1	2	1						1
Receiving stolen property	2		2							
Removing property under lien	1	1								1
Unlawfully cutting timber	1	1								1
Vagrancy	1			1						2
Violating auto law	17	11	1	5						11
Violating check law	3	3								3
Violating game law	1			1						
Violating prohibition law	32	16	3	6	7			7	1	12
Violating road law	1	1								1

CIRCUIT COURT OF PERRY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Violating Sunday law	2	1		1						1
Totals	188	111	19	46	12		28	24	2	66

Percentage of convictions, 59.04. Predominant crime, violating prohibition law.

CIRCUIT COURT OF PICKENS COUNTY

Abusive language	5	5								
Aiding felon to escape	1			1						
Assault	5	4		1						
Assault and battery	10	10						2		2
Assault and battery with weapon	6	6						1		
Assault to murder	10	7	1	1	1		1			5
Attempt to distill	9	9								4
Burglary	2	2					2			

Carrying concealed weapon	5	5						1		1
Disposing mortgaged property	2			2						
Distilling	3	1	1	1			1			
Disturbing religious worship	3	3								
Embezzlement	1			1						
Grand larceny	6	2		1	3		2			
Manslaughter	3	3					2			1
Murder	2		1		1					
Petit larceny	6	5		1						2
Practicing medicine without license	1	1								1
Public drunkenness	5	4			1					3
Reckless driving	4	3		1						2
Shooting into dwelling	1				1					
Violating check law	3	2		1						
Violating prohibition law	23	17	1	3	2			1		7
Totals	116	89	4	14	9		8	5		27

Percentage of convictions, 76.72. Predominant crime, violating prohibition law.

CIRCUIT COURT OF PIKE COUNTY

Arson	2	1	1				1			
Assault and battery	1	1								1
Assault to murder	8	4	2	2			4			

CIRCUIT COURT OF PIKE COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Bigamy	2			2						
Carrying concealed weapons	4		1	3						
Concealing stolen property	1	1					1			
Conspiracy to commit grand larceny	1			1						
Disturbing religious worship	2	1		1						1
Embezzlement	4	1		3			1			
False pretense	2	1			1		1			
Forgery	5	2		1	2		2			
Gaming	6	6								6
Grand larceny	16	9	6		1		9			8
Larceny and embezzlement	23			23						
Malicious mischief	2	1		1						1
Manslaughter, first degree	1	1					1			
Manslaughter, second degree	1	1						1		
Miscegination	1			1						
Murder, first degree	2	1	1				1			
Murder, second degree	5	1	3	1			4			
Perjury	1		1							
Violating prohibition law	55	34	7	11	4		18	16		4

Totals	145	66	22	49	8		43	17		21

Percentage of convictions, 45.52. Predominant crime, violating prohibition law.

CIRCUIT COURT OF RANDOLPH COUNTY

Abusive language	4	3		1						2
Adultery	3			3						
Assault and battery	4	3		1						3
Assault to murder	5	1	1	3			1			
Assault with weapon	9	7		2					1	6
Bail forfeiture	4	4								2
Bastardy	6	3	1	2				1		
Bigamy	1	1					1			
Burglary	7	5		2			5			1
Carnal knowledge	2			2						
Carrying concealed weapon	5	1	1	2	1					1
Concealing stolen property	1	1								1
Decoying child	1		1							
Defacing public property	1	1						1		
Destroying property	1	1								1
Disposing mortgaged property	1			1						
Distilling	45	36	5	4			36			
Disturbing religious worship	3	3								3
Driving spike into saw log	1	1								1
False pretense	4	3			1			1		

CIRCUIT COURT OF RANDOLPH COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Forgery	4	4					4			
Grand larceny	4	1	1	2			1			
Manslaughter	1		1							
Murder	1	1					1			
Petit larceny	4	4								4
Possessing still	1	1					1			
Public drunkenness	6	5		1						5
Reckless driving	2	2								2
Removing property under lien	1			1						
Road default	3	3								2
Seduction	1			1						
Selling property under lien	1	1								
Trespass	2			2						
Vagrancy	2			2						
Violating check law	2		2							1
Violating prohibition law	33	22		11				6		17
Totals	176	118	13	43	2		50	9	1	53

Percentage of convictions, 67.04. Predominant crime, violating prohibition law.

CIRCUIT COURT OF RUSSELL COUNTY

Abandonment	1	1								1
Adultery	2	2						2		
Assault	1	1								1
Assault and battery	9	8	1							8
Assault to murder	13	7	2	4			7			
Attempt to distill	1	1								1
Attempt to steal	2	2								2
Bigamy	2	2					2			
Bringing stolen property into state	1			1						
Burglary	2	1		1			1			
Buying and concealing stolen property	2	1		1			1			
Carrying concealed weapon	3	2		1			1			1
Concealing stolen property	3	3					3			
Distilling	19	14		5			14			
Disturbing assemblage of people	3	3								3
Driving automobile while intoxicated	2	1		1						1
Embezzlement	1	1					1			
False pretense	1	1								1
Grand larceny	13	6		7			6			
Keeping gaming table	1		1							
Manslaughter, first degree	4	4					4			
Murder, first degree	1		1							
Murder, second degree	4	3	1				3			

CIRCUIT COURT OF RUSSELL COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Perjury	2			2						
Petit larceny	4	3	1							3
Possessing still	1	1					1			
Presenting fire arms	1	1						1		
Public drunkenness	5	5								5
Receiving stolen property	2	1	1				1			
Reckless driving	1	1								1
Selling property under lien	1	1					1			
Transporting 5 or more gallons whiskey	6	4	2				4			
Trespass	1	1								1
Unlawfully killing dog	1	1								1
Vagrancy	1	1								1
Violating election law	1		1							
Violating prohibition law	45	27	4	14				7		20
Violating revenue law	1		1							
Violating Sunday law	2		1	1						
Total	166	111	17	38			51	10		51

Percentage of convictions, 66.87. Predominant crime, violating prohibition law.

CIRCUIT COURT OF SHELBY COUNTY

Abusive language	5	1		4						1
Adultery	2	1		1				1		
Assault and battery	3			3						
Assault to murder	6	1	2	2	1		1			
Assault with weapon	1			1						
Attempt to distill	53	53								53
Attempt to wreck train	1	1					1			
Burglary	7	5		1	1		1			
Carnal knowledge	5			5						
Carrying concealed weapons	1	1								1
Distilling	54	33	1	16	4		33			
Disturbing religious worship	1	1								1
Driving while intoxicated	3	2		1				1		1
False pretense	3	1		2			1			
Forgery	1	1					1			
Grand larceny	7	2		5			2			
Murder	11	4	4	3			4			3
Non-support	1			1						
Petit larceny	3	1			2					1
Public drunkenness	6	4		2						3
Rape	1	1					1			
Reckless driving	3	1		1	1			1		
Sending threatening letter	1		1							

CIRCUIT COURT OF SHELBY COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Transporting 5 or more gallons whiskey	6	3		3			3			
Trespass	3	1	2							1
Unlawfully killing dog	1			1						
Using auto without owner's consent	1			1						
Vagrancy	1			1						
Violating prohibition law	19	3	1	13	2					3
Violating revenue law	1			1						
Violating Sunday law	2			2						
Total	213	121	11	70	11		48	3		68

Percentage of convictions, 56.81. Predominant crime, violating prohibition law.

CIRCUIT COURT OF SUMTER COUNTY

Abusive language	2			2						
Assault and battery	11	6	1	4						2

Assault and battery with weapon	13	13								
Assault to murder	4	1		2	1		1			
Assault to ravish	1	1					1			
Attempt to distill	3	3								
Burglary	6	5	1				5			
Carrying concealed weapons	8	7		1						
Distilling	6	1	2	3						
Disturbing religious worship	1			1						
False pretense	1	1								
Forgery	3	2		1			2			
Grand larceny	14	5	1	6	2		3			
Manslaughter	1	1								
Murder	4	2	1	1			2			
Petit larceny	5	5								2
Public drunkenness	1	1								
Using automobile without owner's consent	1	1								1
Violating game law	6	1		5						
Violating prohibition law	17	14	1	1	1					4
Violating Sunday law	1			1						
Total	109	70	7	28	4		14			9

Percentage of convictions, 64.22. Predominant crime, violating prohibition law.

CIRCUIT COURT OF ST. CLAIR COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Abusive language	13	5		8				1		5
Arson	1			1						
Assault	1			1						3
Assault and battery	10	3	2	5						1
Assault to murder	6	1	2	3						
Bastardy	2		1	1						
Burglary	7	6	1				6			
Carnal knowledge	2			2						
Carrying concealed weapon	3	1		2						1
Distilling	26	14	3	5	4		14			
Disturbing religious worship	3	3								3
Grand larceny	3	1	1	1			1			
Murder	5	2	2		1		2			
Petit larceny	1		1							
Possessing still	1		1							
Public drunkenness	1	1								1
Rape	1	1								
Receiving deposits for bank	1				1					
Reckless driving	2	1		1						1

Removing landmark	1			1						
Road default	1			1						
Robbery	4	2		2			2			
Selling bad meat	1				1					
Transporting 5 or more gallons whiskey	2	2					2			
Trespass	2	2								2
Vagrancy	1			1						
Violating check law	1			1						
Violating game law	7	1		6						
Violating prohibition law	10	5	1	4				2		3
Total	119	51	15	46	7		27	3		20

Percentage of convictions, 42.85. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TALLADEGA COUNTY

Abusive language	2	2								2
Adultery	1	1								1
Assault	2	2								2
Assault with weapon	12	11		1				6		5
Attempt to distill	6	6								6
Bastardy	1	1						1		
Bigamy	2	2					2			

CIRCUIT COURT OF TALLADEGA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Burglary	9	9					9			
Carnal knowledge	1		1							
Carrying concealed weapon	2	2						2		
Disposing mortgaged property	1		1							
Distilling	36	34	1	1			32			
Disturbing religious worship	1		1							
Embezzlement	1			1						
False pretense	1			1						
Forgery	2		1	1						
Manslaughter	2	2					2			
Murder	5	1	3	1			1			
Obscene language	3	2		1				1		1
Petit larceny	3			3						
Possessing still	1			1						
Public drunkenness	3	1	2							1
Rape	1	1					1			
Shooting into dwelling	2	2						1		1
Taking girl under 14 for prostitution	2	2					2			
Transporting five gallons or more whiskey	1	1					1			
Transporting liquor	2	2					2			

Vagrancy	1	1						1		
Violating prohibition law	31	25	2	4				12		13
Total	137	110	12	15			52	24		32

Percentage of convictions, 80.29. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TALLAPOOSA COUNTY

Abusive language	4	3		1						3
Arson	1		1							
Assault and battery	4	4								4
Assault and battery with weapon	2	2								2
Assault to murder	8	4		4			4			
Assault to ravish	3		2		1					
Assault with weapon	8	5		2	1			1		4
Attempt to influence juror	1	1								1
Bail forfeiture	2	2								1
Bastardy	3	1		1	1					
Burglary	3	3					3			
Carnal knowledge	1		1							
Carrying concealed weapon	5	3	1	1						3
Destroying property	1		1							
Disposing mortgaged property	3	1		2						1
Distilling	28	19		9			17			
Driving while intoxicated	2	2								2

CIRCUIT COURT OF TALLAPOOSA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Embezzlement	1			1						
False pretense	8	4		3	1					4
Forgery	1			1						
Gaming	1			1						
Grand larceny	7	6		1			6			
Manslaughter	3	2	1				2			
Murder	6	5		1			5			
Operating slot machine	7			7						
Perjury	2			2						
Petit larceny	1			1						
Possessing still	2	2					2			
Presenting fire arms	3	2		1						2
Public drunkenness	5	3	1	1						3
Reckless driving	4	4						1		3
Trespass	1			1						
Vagrancy	4	1	2		1					1
Violating election law	1				1					
Violating prohibition law	28	9	3	14	2			5		4
Violating Sunday law	2	2								2

Total	166	90	13	55	8	43	7		41

Percentage of convictions, 54.23. Predominant crime, violating prohibition law.

CIRCUIT COURT OF TUSCALOOSA COUNTY

Abortion	1		1						
Abusive language	7	5		2					5
Adultery	1			1					
Arson	4			4					
Assault and battery	21	20	1				2		19
Assault and battery with weapon	14	12	1	1			5		11
Assault to murder	9	4	4	1		4			
Assault to ravish	3	2	1			2			
Assault with weapon	2	1		1			1		1
Attempt to distill	20	20					12		20
Bastardy	7	2	3	2			1		1
Burglary	8	5	2	1		4	1		
Carnal knowledge	6	4	1	1		4			
Concealing stolen property	1	1				1			
Disposing mortgaged property	3	1	1	1				1	1
Distilling	36	28	2	4	2	28			
Disturbing religious worship	1	1							1
Embezzlement	1			1					
Forgery	31	8	1	19	3	4	4		2
Grand larceny	36	19	2	13	2	12	7		1

CIRCUIT COURT OF TUSCALOOSA COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Habeas corpus	1				1					
Incest	2	1		1			1			
Juvenile delinquent	1	1								
Keeping gaming table	1			1						
Manslaughter, first degree	5	5					5			
Manslaughter, second degree	2	2						1	1	2
Murder, first degree	4		2		2					
Murder, second degree	4	4					4			
Perjury	1			1						
Petit larceny	26	24		2				20	3	17
Public drunkenness	5	4	1							1
Reckless driving	2	2							1	2
Robbery	2	1		1						
Transporting 5 or more gallons whiskey	4	2	1	1			2			
Trespassing	1		1							
Trespassing on state lands	5	5								5
Vagrancy	9	4		4	1					4
Violating automobile law	1	1							1	
Violating check law	6	4		1	1			1		4
Violating game law	4			4						
Violating prohibition law	60	46	1	13				17	1	46

Violating sec. 3325	1	1						1		1
Total	359	240	26	81	12		71	73	8	144

Percentage of convictions, 66.85. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WALKER COUNTY

Abusive language	4	2	1	1						2
Aiding an escape	3	3						3		
Assault and battery	17	13	3	1						10
Assault to murder	22	17	1	4			1	4		12
Assault to ravish	1	1								1
Assault with weapon	2	2								2
Attempt to defraud	3	3								3
Attempt to distill	6	5		1						5
Burglary	6	4		2			2			
Burglary and grand larceny	10	7	1	2			2			5
Carnal knowledge	1		1	1						
Carrying concealed weapons	6	3	2	1						3
Disposing mortgaged property	1			1						
Distilling	18	15	1	2			14	1		
Disturbing religious worship	7	2	2	3						2
False pretense	1	1								1
Forgery	3	2	1					2		
Grand larceny	16	12	3	1			8	2		3

CIRCUIT COURT OF WALKER COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Peniten-tiary.	Hard Labor.	Jail.	
Murder	16	12	3	1						
Operating slot machine	12	10		2						10
Petit larceny	9	7		2					1	4
Presenting fire arms	1	1								1
Public drunkenness	12	8	3	1						8
Reckless driving	2	2								2
Robbery	1		1							
Trespass	1	1								1
Unlawfully operating pool room	1	1								1
Vagrancy	6	1	2	3						1
Violating automobile law	1	1								1
Violating prohibition law	56	32	9	15				3		30
Total	245	168	33	44			27	15	1	108

Percentage of convictions, 68.57. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WASHINGTON COUNTY

Abusive language	9	6	1	2						10
Adultery	1		1							
Assault and battery	2	1		1						1
Assault to murder	1				1					
Assault with weapon	1			1						
Attempt to distill	9	9						1		8
Carrying concealed weapon	2	1		1						1
Contempt of court	2			2						
Detaining female	1	1						1		
Distilling	18	15	1	2			12	4		
Disturbing religious worship	1	1								1
Disposing mortgaged property	1		1							
Grand larceny	3	2		1				2		
Keeping gaming table	1			1						
Manslaughter, first degree	2	2					1		1	1
Manslaughter, second degree	2	2							1	2
Miscegination	2	2					2			
Murder, first degree	3	1	1		1		1			
Murder, second degree	2	2					2			
Petit larceny	4		2	2						
Public drunkenness	5	3	1	1						3
Resisting arrest	3			3						
Road default	4	1	2	1						1
Seduction	1			1						
Shooting along highway	1	1								1
Temporary use of property	1	1								

CIRCUIT COURT OF WASHINGTON COUNTY—(Continued)

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Unlawful injury to animal	1			1						
Unlawfully killing dog	1		1							
Violating automobile law	4	2	1	1						2
Violating check law	3		1	2						
Violating game law	7	3	3	1						2
Violating prohibition law	22	11	4	7				2		6
Total	120	67	20	31	2		18	10	2	40

Percentage of convictions, 55.83. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WILCOX COUNTY

Assault and battery	2	2						1		2
Assault and battery with weapon	11	11						6	1	11
Assault to murder	2	1		1			1			

Bigamy	1	1					1			
Carrying concealed weapon	6	4	1	1						1
Defacing public building	1	1								1
Disposing mortgaged property	1			1						
Distilling	8	7			1		7			
Driving while intoxicated	2	1		1						1
False pretense	1	1							1	
Forgery	2	2						1	1	
Grand larceny	3	2			1		1	1		
Manslaughter, first degree	2	2					2			
Manslaughter, second degree	1	1					1			1
Murder, second degree	2	2					2			
Petit larceny	7	5	1	1			3	2		3
Possessing still	3	3					3			
Public drunkenness	4	2			2					2
Road default	2			2						
Shooting along public road	1	1								1
Violating automobile law	2	1		1						1
Violating check law	2			2						
Violating prohibition law	29	22		5	2			5	2	22
Totals	95	72	2	15	6		18	16	5	46

Percentage of convictions, 75.79. Predominant crime, violating prohibition law.

CIRCUIT COURT OF WINSTON COUNTY

Character of Offense.	Number Cases Disposed of.	Convictions.	Acquittals.	Nolle Prosequies.	Abated or Withdrawn.	Number Sentences to				Fines Paid or Secured.
						Death.	Penitentiary.	Hard Labor.	Jail.	
Abusive language	12	9	2	1						9
Adultery	2			2						
Assault and battery	28	24		4						15
Assault to murder	6	6								5
Assault to ravish	2	1	1							1
Attempt to distill	7	7								7
Bigamy	2			2						
Burglary	6	5	1				3			2
Burglary and grand larceny	1	1						1		
Carnal knowledge	6	5		1			4			1
Carrying concealed weapon	9	6		3						5
Defacing building of another	1			1						
Defacing public building	1			1						
Disposing mortgaged property	1		1							
Distilling	36	29	6	1			14			13
Disturbing religious worship	8	5	2	1						4

Murder	5	1	3	1			1			
Non-support	1			1						
Petit larceny	3	2		1						1
Possessing still	4	4					3			1
Presenting fire arms	2	2								1
Public drunkenness	25	18	4	3						15
Reckless driving	6	5	1							5
Violating game law	3	2		1						
Violating prohibition law	34	24	5	5			1	1		21
Violating revenue law	1	1								1
Totals	212	157	26	29			26	2		107

Percentage of convictions, 74.05. Predominant crime, violating prohibition law.

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